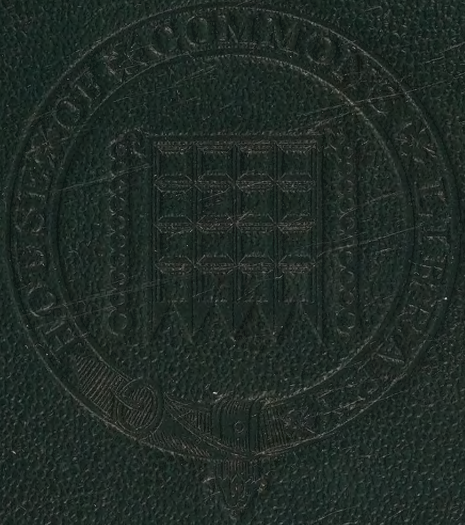

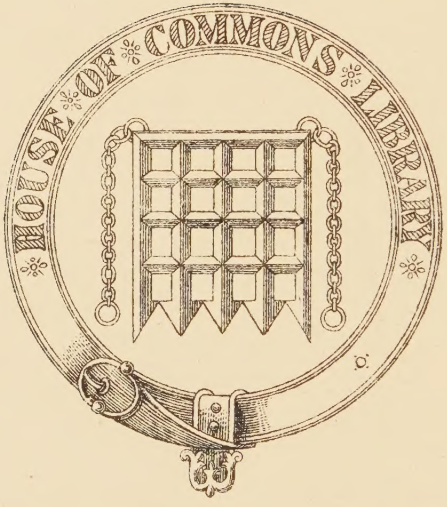

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House of Lords

REPORT

FROM THE

SELECT COMMITTEE

ON

PEERAGES IN ABEYANCE

WITH THE

PROCEEDINGS OF THE COMMITTEE, MINUTES OF EVIDENCE AND DOCUMENTS.

Ordered to be Printed, 1st December, 1926.

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Peerage &c.

ORDER OF REFERENCE.

Die Jovis, 24° Junii, 1926.

Peerages in Abeyance—Moved, That a Select Committee of this House be set up to inquire into the subject of Peerages in Abeyance, and report to the House on the matter (The Lord Chancellor) : Agreed to.

The Lords following were named of the Committee :—

The Marquess of Bath.
The Lord Kintore (Earl of Kintore).
The Lord Stanley of Alderley (Lord Sheffield).
The Lord Hylton.
The Lord Redesdale.
The Lord Sumner.
The Lord Muir Mackenzie.
The Lord Askwith

The Committee to appoint their own Chairman.

Die Mercurii, 30° Junii, 1926.

Peerages in Abeyance—Select Committee to meet on Wednesday, the 7th of July next, at Eleven o'clock.

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MINUTES OF EVIDENCE ... ... p. 25
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The cost of preparing for publication the shorthand Minutes of evidence taken before the Committee was £20 15s. 6d.

The Cost of Printing and Publishing this report is estimated by the Stationery Office at £119 3s. 0d.

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SELECT COMMITTEE ON PEERAGES IN ABEYANCE.

REPORT

By the Select Committee appointed to inquire into the subject of Peerages in Abeyance and report to the House on the matter.

ORDERED TO REPORT.

1. The Committee have met seven times and have examined six witnesses.

2. They have given full consideration to the circumstances upon which the House was moved to appoint them. It would appear to have become the practice to advise His Majesty that an abeyance should be terminated in favour of a petitioner, who proves to the satisfaction of the Committee for Privileges, (1) that the original holder of the barony was summoned to and sat in a Parliament recognised as a properly constituted legislative assembly; (2) that the petitioner is a coheir to such barony; (3) that due notice has been served upon such other coheirs as can be found; (4) that every reasonable effort has been made to trace lines apparently extinct.

3. The return, made pursuant to the Order of the House dated 22nd March, 1923, gives particulars of all Peerages called out of abeyance down to that time, with the following results.

In 1604, the date of the first case mentioned (Despenser), the law as to abeyance was only beginning to be formulated, nor did it take any definite shape till after the middle of the century. Accordingly, neither it nor the second case, (Darcy, 1641), leads to any definite conclusion.

The number of cases, in which abeyances were terminated in the XVIIth century, exclusive of these, is two; in the XVIIIth century seven; in the XIXth nineteen; in the present century eleven, the last but one consisting of a group of four baronies and the last consisting of two. Since the date of the return there have been two further cases of termination of abeyances. Such proceedings, therefore, have noticeably increased on the whole.

The duration of the abeyances thus terminated has also greatly increased. It is true that in the first two cases above mentioned the abeyance had continued 143 and 223 years respectively, but for over a hundred years afterwards there was no case of a duration of so much as 40 years. In 1764, came the Botetourt case with a duration of 358 years, but it was followed by no similar case before the accession of Queen Victoria.

The abeyances terminated in the XIXth century before 1837 were six, the longest being 191 years: those terminated during Queen Victoria's reign were thirteen, of which Camoys (1839) was much the longest so far recorded. In the four years, 1838 to 1841 inclusive, there were six terminations, of which four averaged 329 years each. Only one case of termination occurred in the next thirty years, and, until the end of the century, there was none, in which the abeyance had lasted longer than 100 years. In the present century, in the nine years, 1913-1921 inclusive, eight abeyances were terminated of an average duration of 304 years each, while one, previously terminated in 1903, had lasted 440 years. It was the longest up to that time, but it has since been exceeded by an abeyance of 547 years. In 1923 and 1924, since the completion of the return, two further abeyances have been terminated, one that had begun 426 years before, and the other, which had endured only 158 years. It is further to be noticed that in four cases arising in this century it is reasonably plain that there existed among the petitioners some arrangement for a division among themselves of the abeyant baronies, to which they were co-heirs, though it is not suggested that these cases involved anything corrupt or mercenary.

4. The adverse criticism, which these cases have undoubtedly attracted, has been increased in consequence of the historical conclusions, which have resulted from the extensive studies of the records that have taken place in the last thirty or forty years. Baronies which fall into abeyance are baronies with descent to heirs general. Practically without exception, baronies created by patent are limited to heirs male of the body, instances of special remainders, usually confined to the first or second descent from the first creation, not affecting the present question. The practice of creating baronies by patent with descent in the male line began as early as 11 Rich. II, was followed fifty years later and before long became the rule. It had almost superseded any other mode of creation by the end of the XVth century apart from anomalous cases, and the latest actual instance of a barony created by writ of summons and sitting is that of Clifford in 1628. It may be said that in substance such baronies belong to the times previous to the end of the Wars of the Roses.

5. It is only where a barony by writ has been held by a peer, who leaves female descendants but no male issue, that the con-

dition of abeyance can arise. The dignity is impartible and remains in suspense among co-heiresses, since seniority in age now gives no preference as a line of descent, if it ever did, and among the co-heiresses themselves none takes the title, nor can it be held jointly or in shares. This condition is called an abeyance. If the descendants of those persons among whom the dignity became abeyant are reduced till all the lines have become extinct except one, the representative of that line takes the title as of right: otherwise the abeyance can only be terminated by the favour of the Crown.

6. These doctrines, now well-settled, only became established in the course of the XVIIth century. The proposition that a dignity can be created by a writ of summons to Parliament first appears in a definite shape and formulated with authority in Sir Edward Coke's *Institutes* (Pt. I. 16B), and to this he adds the qualification that the creation is only complete when followed by a sitting in Parliament. The theory that while in abeyance the dignity is in the hands or in the custody of the King next follows, but its modern form can only be said to have become fully established after the Restoration. The right of the Sovereign to dispose of the dignity was then "ascertained" as one limited to a disposal among such of the representatives of the descendants of the original co-heiresses as can be found, but among these the disposal is to such person as the Sovereign may be pleased to select. Here, accordingly, formal proceedings for the termination of an abeyance find their commencement.

7. Peerage law is in great measure ascertained by usage and, when Sir Edward Coke wrote, living tradition as to the usage in connection with rights recognised as arising from the issue of a writ of summons to Parliament had almost disappeared. The records of what was done during the two centuries which are most material—the XIVth and XVth—, somewhat irregularly kept and frequently defective through lapse of time, appear not to have been examined in his time with minute care, and probably were scattered and accessible only with difficulty. Above all, the modern methods of comparative historical criticism were still unknown.

8. Since the records still remaining have been collected, classified and examined by new generations of scholars trained in a different school, it has been discovered that there is grave reason to doubt, to say the least of it, whether during these two centuries either Sovereign or subject had ever any idea that by a summons to a Parliament a hereditary right either was being or had been created. It is only very gradually that any suggestion of the kind can be identified, and the development of the suggestion can be traced in recognisable stages. Instances are numerous, in which the record of what was actually done negatives any rule to the effect that the receipt of a writ of

summons was the commencement of a heritable dignity. Instances in which any such rule can be clearly recognised are practically non-existent. To this it is to be added that apparently there is no discoverable authority for Coke's qualification that sitting must succeed summons in order to make the creation effectual. But for such a limitation the number of baronies of this class, legally valid, would have been multiplied many times over, but in itself it is illogical, for it makes the dignity depend in theory not solely on the act of the Sovereign but on the further action of the subject, and in practice it operates capriciously, for the requisite proof now depends upon the accident that evidence can be found in some admissible form of a sitting under the original writ or subsequent writs, of which regular records are not forthcoming.

9. Whether the conclusions of modern historical research are or are not correct we are neither concerned nor competent to decide. We have been assured, and we believe it to be the case, that they are now accepted by the great majority of historical scholars. The law, however, if settled, cannot be unsettled in this way. It is not for us to discuss what material Sir Edward Coke conceived himself to have had for the opinion, which his great name has made so authoritative. If it was inadequate, abundant excuse can be found, for when issues arise the law has to be laid down, and when laid down has to be followed in other cases, and it cannot wait for better historical enlightenment and for the rise of future generations of scholars. Whatever view the Committee for Privileges may on any future occasion think itself free to take on any part of this subject, we can only accept the rules as they stand, nor have we any authority or desire to criticise any of the reports that have been made in recent cases. We accept them, and recognise that the claims established by them now stand beyond challenge.

10. It is, however, in our opinion plain that any adverse criticism of the applications, which have been given by modern practice to the established rules, must be considerably intensified by the above considerations. When an abeyance is terminated the petitioner becomes entitled to the precedence of the original holder of the dignity, and the older the dignity the higher the precedence. Whatever feelings may be entertained by those, who thus see others preferred before them, cannot but be rendered more acute, when they learn how authoritative is the view that the newly restored dignity never had any historic existence at all.

11. A peerage in abeyance is in several respects anomalous. Unlike the case of a dormant peerage, which, though dormant, remains vested in someone until it is extinct, no absolute right

to have an abeyant peerage called out of abeyance vests in anyone. The petitioner can only appeal to the favour of the Crown, and this it rests entirely in the Sovereign's pleasure to accord or to refuse. We may formulate sundry considerations, which arise when the termination of an abeyance in the case of one of these ancient baronies comes into question, as follows :—

(1) While, on the one hand, no single co-heir has any right to the termination of an abeyance, other co-heirs, on the other hand, may prefer that the condition of co-heirship should continue.

(2) There may be co-heirs other than the petitioner who, without themselves desiring to petition, are equally or better qualified to do so.

(3) Co-heirs in the present day usually have a very small share of the complete co-heirship of the dignity, yet the prayer of a petitioner must be that the dignity should be granted to him in its entirety.

(4) In many instances it is really the heavy expense of proving pedigree and collecting evidence that prevents other co-heirs from lodging a petition, though they would otherwise desire to do so.

(5) The recognition of public service or of other merit in the individual to be ennobled, which attends the creation of a peerage to-day, is not in modern practice a consideration equally applicable, if at all, to individuals in whose favour abeyances of long duration are terminated.

(6) The termination of an abeyance brings to an end the condition of co-heirship in favour of one person and ousts all other co-heirs from their existing position and future prospects and selects for the present enjoyment of the peerage one person, who may have no particular claim to be preferred, may possess few, if any, of the lands, the tenure of which originally led to the issue of the summons to Parliament, and have but a small fraction in his or her veins of the blood of the original grantee.

12. Anomalous as this state of things may be, it is not incapable of temperate amendment, and should not be made the subject of violent and unsystematic change. A rule that an abeyant barony should continue in abeyance, till it becomes vested in one person by the failure of the other co-heirs, equally with a rule that the abeyance should, as a matter of course, be terminated in favour of such one of the co-heirs as they or some of them may agree upon, simply nullifies that discretionary intervention of the Royal favour, which is the whole basis of the law of abeyances. These suggestions may, therefore, be dismissed. Again, to give an automatic preference to the representative of the senior line of descent is to depart from the principle of peerage law which leads to the doctrine of abey-

ance itself, for it is the inability of one co-heiress to claim priority over others on the ground of priority of birth, that finally causes the impartible dignity to become equally abeyant among them all.

13. At the same time we think that it is by no means impossible to find a way of removing the more conspicuous of the drawbacks, which appear to attend the recent practice in this subject. We are unanimous in thinking that, under the circumstances above set out, some change in practice is much to be desired. It is to be noticed that they resemble closely, but in an accentuated form, the situation which, as disclosed by the return, had arisen in 1841. It is plain that the sudden and permanent reduction after that year in the number of abeyances which were terminated, as compared with the number and character of those terminated in the previous four years, is no mere coincidence. It is impossible to ascertain now whether this was the result of discreet inquiries made by aspiring claimants in influential quarters or was caused by some intimation made by authority, but it is plain that the heyday of terminations was itself terminated, and this suggests some positive policy adopted by the statesmen, who then and afterwards, advised the Crown. It appears to us that in the present similar circumstances some similar change is even more desirable. It cannot be for the advantage of the peerage as an institution, that in one branch of its recruitment adverse criticism should be invited by the application, as a matter of course, of legal rules whose moral authority has been impaired by well-informed historical opinion.

14. Even before 1838 doubts had been entertained on this subject and by very highly qualified persons. The Third Report on the Dignity of a Peer (p. 33), and the Fourth (pp. 323, 324), show that the Committee had it seriously in contemplation to bring within bounds the resuscitation of dignities so peculiar as baronies created by writ of summons and sitting. They drew attention to the long anterior period that elapsed between the first emergence of the legal doctrine as an accepted matter, and the time when the writs of summons were issued, upon which the dignity, subsequently established by law, was supposed to have been founded, and they had it under consideration to fix a date as from which the creation of baronies by writ could be made to run with some reasonable reference to the time when the law was "ascertained," rather than from the time when the feudal baron first sat in a mediaeval council. Owing to the magnitude of the enquiry, the Committee contented themselves with merely tentative suggestions, and now, under the legal rule that when the law is once ascertained it is deemed always to have been established law in that form, this class of barony enjoys the most ancient origin. It may be anomalous to found

a rule on usage and then deem it to have been existent from the very beginning of the usage, but so it is.

15. The importance of this aspect of the question is enhanced by the number of possible baronies of great antiquity, which are not actually accounted for. Of these there are many scores. Their number, no doubt, is very greatly reduced, when the difficulties of proof are considered, for many of the families thus ennobled must have become extinct, and in the remaining cases no proof is likely to be adduced sufficient to satisfy the requirements of the Committee for Privileges. Still, a number, uncertain but too substantial to be ignored, will remain, and the prospect that these may become the subject of claims in being is a serious matter. We were also informed that there are at present fifty-one baronies now in abeyance, in which the necessary sittings could be proved, of which eleven are under attainder, and at least eight have already been the subject of petitions for termination but without success. It is thought that thirty-four are now liable to be claimed. The question, therefore, of the future termination of abeyances is not one of insignificant magnitude.

16. Our attention has been drawn to sundry matters of minor importance, which, however, are not without a significance of their own.

It has been suggested that what is called a " traffic " exists, or may exist, in the promotion of speculative claims to peerages in abeyance. We have not been able to learn, nor did we expect to learn, that in any specific cases such a traffic has taken place. That such a suspicion exists we are inclined to believe, but with what foundation in fact it is impossible to say. In the cases of many of the peerages now in abeyance the families, to which belong the co-heirs among whom the peerage is abeyant, are quite well known, and so too in many cases are the actual persons entitled to petition. Deaths continually change these persons and may replace one, who is indifferent to his opportunities, by a newly entitled person, who is willing to try his fortune. If industrious and watchful genealogists take note and advantage of such occasions, the matter is one neither for surprise nor for censure. It is only in the very unlikely case of an open scandal, that anyone except the parties concerned can be affected, but in such an event it must be admitted that the credit of the peerage is likely to suffer. We think that the most effective remedy for any mischief of this kind will be found, and is incidentally involved in an effective curtailment of the possible field of speculative claims.

17. It is also pointed out that, in cases where a single peer holds more baronies by writ than one and they all fall into abeyance on his death, arrangements may be come to between two or more persons, all equally entitled to petition for their

termination, with the object of avoiding opposition and of leading to an amicable division. One petitioner may seek the termination of one abeyance, another of another, and neither may avail himself of his right of opposition. Such arrangements are not necessarily objectionable. No one can be compelled to seek more honours than he desires. One man may be unambitious or may be content with a dignity that he already has, and accordingly may abstain from an opposition, which would merely be obstructive; another may honourably desire to revive all his family honours. For these cases it appears to us that no single rule can be found. The matter seems to be one best dealt with by the Committee for Privileges. If every claimant is strictly required, as a matter preliminary to the hearing of his petition, not merely to prove to the utmost that he had exhausted all existing co-heirs, so far as it was practicable to do so, and that he had notified them all of his petition, but also that he had entered into no arrangement with any of them or that, if he had done so, he had also disclosed the whole of the terms and established its freedom from any taint of impropriety or corruption, the Committee can effectively secure the honourable character and conduct of a petitioner's case.

18. Our terms of reference extend beyond the case of abeyances of Baronies only. Whether in the case of Earldoms abeyances can occur and would be governed by the rules now settled for the abeyances of baronies is a question that has not yet been decided and has rarely been even mooted. There are differences between Earldoms and Baronies in regard to their intrinsic nature and the incidents of office which attach to ancient Earldoms, which may constitute a sufficient distinction between the two dignities in this connexion. We express no opinion on this nor on any similar point. If, however, the same rules of law are applicable, we see no reason why the same general rules for regulating the practice should not apply equally to both dignities.

19. We have also considered the practice of procuring by Act of Parliament the reversal of an Attainder of an ancestor, in order that his descendants may be capable of succeeding to an abeyant peerage. It has been represented to the Committee that it would appear to be at least doubtful whether, even on a claim of right, such attainders ought to be reversed where the attainder has been in existence for several centuries, but that at any rate where the reversal of an attainder is necessary to enable a petitioner to lay claim to a peerage long in abeyance, it would be advisable that the Crown should be fully advised of all the circumstances of the attainder, as well as of the reasons advanced for its reversal after so long a continuance. It has been further pointed out that, inasmuch as Bills for the

reversal of attainders are by law required to be introduced first into the House of Peers at the instance of the Crown, the Crown is thus asked to exercise a double grace—the selection for restoration in blood, out of the whole body of attainted descendants of the single co-heir thus favoured, and further the termination of an abeyance in his favour by selection out of the whole co-heirship.

20. We have throughout scrupulously borne in mind the following considerations. The grace and favour of the Sovereign, to be exercised or not in his absolute pleasure and discretion, under the advice of the responsible minister, constitute the sole means, by which a peerage can be called out of abeyance. In this matter the Royal prerogative is not to be fettered or diminished in any manner. Furthermore, the minister, upon whose responsibility advice in the matter is tendered to the Sovereign, must be free to use his own judgment with regard to the advice which he thinks it his duty to offer. It is, however, in no way inconsistent with these paramount considerations, and is indeed in accordance with numerous precedents, humbly to submit general rules of practice in order to simplify and regularise the manner in which abeyant peerages should be dealt with. Where special reasons or circumstances exist (of the existence of which the minister must be the judge), he would be entirely free to advise the Sovereign as the occasion might warrant, but the existence of a settled practice in the absence of special circumstances, would at once lighten his official labours and protect him from personal importunities.

21. We therefore venture to suggest to the House the following general recommendations to be humbly submitted to His Majesty :—

In the absence of special circumstances or special reasons to the contrary

1. No abeyance should be terminated, the first commencement of which occurred more than one hundred years before the presentation of the petition.

2. No petition should be allowed to proceed, where the petitioner represents less than one-third of the entire dignity.

3. Except in the case of petitions which have already been presented, it should be an instruction to the Attorney-General that his report to the Crown should advise that no further proceeding be taken in the case of any petition which does not comply with these two requirements.

4. When the Committee for Privileges is satisfied that any arrangement, entered into between the petitioner and any co-heir, is tainted with any impropriety, no report should be made by it upon the petition except that such arrangement is not shown to have been a proper one.

5. In considering whether or not the Sovereign should be advised to extend his grace to the petitioner for a termination of an abeyance, the like regard should be had to character, position, services and fitness as would be had in the case of a subject, on whom it is in contemplation to recommend that a peerage should be conferred.

6. Regard should be had to the like considerations in connexion with petitions for the introduction of Bills into the House of Lords for restoration in blood to qualify a claimant to the termination of an abeyance to enjoy the peerage.

LORDS PRESENT, AND MINUTES OF PROCEEDINGS AT EACH SITTING OF THE COMMITTEE.

Die Mercurii, 7° Julii, 1926.

LORDS PRESENT:

MARQUESS OF BATH.	LORD HYLTON.
LORD KINTORE (Earl of Kintore).	LORD REDESDALE.
LORD STANLEY OF ALDERLEY (Lord Sheffield).	LORD SUMNER.
	LORD MUIR MACKENZIE.
	LORD ASKWITH.

The Order of Reference is read.

It is moved, That the Lord *Sumner* do take the Chair.

The same is *agreed to*.

The Course of Proceedings is considered.

Ordered,—That the Committee be adjourned to Wednesday next, the 14th of July, at Eleven o'clock.

Die Mercurii, 14° Julii, 1926.

LORDS PRESENT:

MARQUESS OF BATH.	LORD HYLTON.
LORD KINTORE (Earl of Kintore).	LORD REDESDALE.
LORD STANLEY OF ALDERLEY (Lord Sheffield).	LORD SUMNER.
	LORD MUIR MACKENZIE.
	LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

The Order of Adjournment is read.

The Proceedings of the 7th of July are read.

The following witnesses are called in and examined, viz., Mr. *A. J. Eagleston*, C.V.O., and Mr. *R. Geoffrey Ellis*, M.P. (Vide the Minutes of Evidence.)

Ordered,—That the Committee be adjourned to Wednesday, the 28th of July, at Eleven o'clock.

Die Mercurii, 28° Julii, 1926.

LORDS PRESENT:

LORD KINTORE (Earl of Kintore).
LORD STANLEY OF ALDERLEY (Lord Sheffield).
LORD HYLTON.
LORD REDESDALE.
LORD SUMNER.
LORD MUIR MACKENZIE.
LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

The Order of Adjournment is read.

The Proceedings of the 14th of July are read.

The following witnesses are called in and examined, viz., Sir *Ronald Waterhouse*, K.C.B., C.M.G., C.V.O., Mr. *R. Geoffrey Ellis*, M.P., and Mr. *G. Proby*. (Vide the Minutes of Evidence.)

Ordered,—That the Committee be adjourned to Wednesday next, the 4th of August, at Eleven o'clock.

Die Mercurii, 4° Augusti, 1926.

LORDS PRESENT:

MARQUESS OF BATH.
LORD KINTORE (Earl of Kintore).
LORD HYLTON.
LORD REDESDALE.
LORD SUMNER.
LORD MUIR MACKENZIE.
LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

The Order of Adjournment is read.

The Proceedings of the 28th of July are read.

The following witnesses are called in and examined, viz., Mr. *G. Proby* and Mr. *R. Geoffrey Ellis*, M.P. (Vide the Minutes of Evidence.)

Ordered,—That the Committee be adjourned to Wednesday, the 10th of November, at Eleven o'clock.

Die Mercurii, 10° Novembris, 1926.

LORDS PRESENT:

MARQUESS OF BATH.	LORD HYLTON.
LORD KINTORE (Earl of Kintore).	LORD SUMNER.
LORD STANLEY OF ALDERLEY (Lord Sheffield).	LORD MUIR MACKENZIE.
	LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

The Order of Adjournment is read.

The Proceedings of the 4th of August are read.

The following witnesses are called in and examined, viz., Sir *Henry Farnham Burke*, K.C.V.O., C.B., Garter King of Arms, and Mr. *H. A. Doubleday*. (Vide the Minutes of Evidence.)

Ordered,—That the Committee be adjourned to Wednesday next, the 17th of November, at Eleven o'clock.

Die Mercurii, 17° Novembris, 1926.

LORDS PRESENT:

LORD KINTORE (Earl of Kintore).	LORD HYLTON.
LORD STANLEY OF ALDERLEY (Lord Sheffield).	LORD SUMNER.
	LORD MUIR MACKENZIE.
	LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

The Order of Adjournment is read.

The Proceedings of the 10th of November are read.

The following witness is called in and examined, viz., Mr. *R. Geoffrey Ellis*, M.P. (Vide the Minutes of Evidence.)

Ordered,—That the Committee be adjourned to Wednesday, the 1st of December, at Eleven o'clock.

Die Mercurii, 1° Decembris, 1926.

LORDS PRESENT :

MARQUESS OF BATH.
LORD KINTORE (Earl of Kintore).
LORD STANLEY OF ALDERLEY (Lord Sheffield).
LORD HYLTON.
LORD REDESDALE.
LORD MUIR MACKENZIE.
LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

The Order of Adjournment is read.

The Proceedings of the 17th of November are read.

The Draft Report is considered, and *agreed to*, with Amendments.

Ordered,—That the Lord in the Chair do make the Report to the House.

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House of Lords.

MINUTES OF PROCEEDINGS

BEFORE

THE SELECT COMMITTEE

ON

PEERAGES IN ABEYANCE.

Die Mercurii, 7° Julii, 1926.

LORDS PRESENT:

MARQUESS of BATH.	LORD HYLTON.
LORD KINTORE (Earl of Kintore).	LORD REDESDALE.
LORD STANLEY of ALDERLEY (Lord Sheffield).	LORD SUMNER.
	LORD MUIR MACKENZIE.
	LORD ASKWITH.

LORD SUMNER IS MOVED TO THE CHAIR.

(*Chairman.*) The Motion appointing this Committee is "That a Select Committee be set up to inquire into the subject of Peerages in Abeyance and report to the House on the matter." The first point we have to consider is whether we are to go beyond an inquiry into the practice of calling Baronies out of abeyance, which has been the general case that has arisen, or whether, in view of the terms of reference, we ought at any rate to keep it open to ourselves to deal with the question of Earldoms, of which I believe there is one possible case that might come before the Committee for Privileges. The bulk of

the work will have to be done on the Baronies clearly, but, if we say nothing about Earldoms, it might have to be done again at some time or other, because, if our report is in favour of some limitations on the practice of calling Baronies out of abeyance and that is adopted, somebody will be sure to say, quite rightly, when the case of an Earldom cropped up, that it did not follow that the same rule must apply there; and then there would, I suppose, have to be another Committee appointed to inquire. On the other hand we have so much less to go upon that we might ultimately decide just to keep the question open and indicate what the arguments were.

(Lord *Askwith.*) The word "Peerages" is used and not "Baronies".

(*Chairman.*) Yes, it is quite general—"Peerages in Abeyance". I suggest to the Committee that we might, at any rate for the present, keep ourselves quite open to deal with Earldoms in any way we might be advised as we get on, but first to exhaust the question of Baronies. (*Agreed.*)

(*Chairman.*) The next thing is what sort of issues we shall present to ourselves. There is an established practice, and the
cument 1. Memorandum, which has been circulated, states very clearly how that practice has grown up and what it is at present. As far as I can make out, the general feeling is that it is too lax at present for it to be properly dealt with. One suggestion is that it should be limited by a limitation of time, after which I assume it would mean that Baronies will not be called out of abeyance. There are difficulties about that because if you fix a very long time you might almost as well not have a limit at all, and if you fix a very short time there may be people who would say: "We were just on the point of discovering the one link which was required to prove our case, and we have been cut off."

(Earl of *Kintore.*) Still it might be possible to limit it to so many generations.

(*Chairman.*) It might be possible to do it by generations. At any rate that is one very proper issue for us to take up. The next matter is as to the proportion of the inheritance which the claimant must represent or the degree of relationship. Those paths are quite worth exploring. I have suggested as an amendment that we should put in the words "or otherwise" so as to keep the door open for any fertility of suggestion.

(Lord *Askwith.*) "Or otherwise" would meet the consideration of whether a Barony, after it had fallen into abeyance, could be claimed if an application had not been made within a reasonable number of years.

(*Chairman.*) Yes, some kind of dispensing power.

(Lord *Askwith.*) Supposing it had been in abeyance amongst hundreds of different descendants and was not claimed for 500 years, that would be too long a period for it to be revived. Some abeyed person ought to claim it within a reasonable time after it goes into abeyance.

(Lord *Stanley of Alderley.*) That is covered by sub-paragraph (i) of the Section 8 (*b*) of the agenda.

(Lord *Askwith.*) Sub-paragraph (i) may mean two things—either that, or after it has been in abeyance for such and such a time it shall not be claimed at all.

(*Chairman.*) " Can be terminated " only gives power to advise the Crown to call it out of abeyance; it is not " shall ". Will it be enough if we work upon those three heads and see how we get on, because at this stage it is rather difficult actually to formulate the questions we shall ultimately deal with in the report. Probably we shall want to take evidence from the witnesses rather liberally.

(Lord *Askwith*). I understand that in the Judicial Office there are documents prepared or nearly prepared giving a great deal of historical information, which could be printed—in fact, one of them has, I believe, been printed—and circulated to the Committee before any witness comes into the chair to speak to them, and which, if circulated, would allow the noble Lords to consider what line of questions they might desire to pursue upon the historical information therein contained.

(*Chairman.*) Yes. Are they lengthy documents?

(Mr. *Badeley.*) They are not very long memoranda. The two most important are already type written, one of them has been circulated to your Lordships, and I will have copies of the others circulated to the Committee forthwith. Documents 1, 2, 2A.

(*Chairman.*) I think it would be a very good thing to circulate that material, because, unless we have it, we may find there is something we do not follow when the witnesses come.

(Mr. *Badeley.*) I was going to put forward the various documents and ask whether the Committee would like to have them circulated or not.

(*Chairman.*) I think it better to have circulation of such documents as there are. In addition could you circulate a list of the best printed books. I see you cite the " Complete Peerage " which goes back some distance, but not very far, and " Collins ". A list of the authorities might be useful. Document 14.

(Mr. *Badeley.*) Certainly.

(Lord *Askwith.*) There is a great deal said about it in the Lord Great Chamberlain's case.

(Lord *Hylton.*) The Committee for Privileges during a number of years past have inquired into the cases presented by claimants, and all that Committee has done is to report to the House that such and such a claimant has or has not made out to the Committee's satisfaction his claim. The Committee for Privileges has never gone further than that, and it has always been entirely in the discretion of the Crown to act upon the report or not. Are we on this Committee to suggest to the Crown, the fountain of honour, to take definite steps or not, because we have never been able hitherto to do more than report to the House.

(Marquess of *Bath.*) The Committee for Privileges is an Advisory Committee.

(Mr *Badeley.*) The report of this Committee, which will be made to the House, will be quite independent of any report of the Committee for Privileges, which only reports in individual cases.

(Marquess of *Bath.*) It will be for the House to act on our report, which is for the purpose of influencing the House I take it.

(Mr. *Badeley.*) Yes. This Committee has been set up for the purpose of dealing with the whole question of Peerages in abeyance, which is a wider matter than the individual cases which come before the Committee for Privileges.

(Lord *Askwith.*) The report of the Committee for Privileges is very narrow indeed. It simply says that there is such a Barony in abeyance and that the claimant is a descendant of the first person who had a right to sit—nothing more; it does not say in its report that that claimant has many senior collaterals who, if they claimed, would have a better claim or a larger part of the inheritance, or anything of that kind, with regard to the original grantee. For instance it does not say—or it did not say in one case that came before the Committee for Privileges—that the claimant had only one twenty-sixth part of the original Barony and was a very junior descendant with many senior descendants collateral with him who could have claimed instead of him.

(*Chairman.*) Supposing we were to report in favour of one or any of the modes to which I have alluded of limiting the practice, it might become necessary for the Committee for Privileges to alter its form of report, because the report, as you say, simply is that the claimant is a descendant, and it leaves it all at large as to how junior a descendant he is, or how small his interest is;

it provides no material whatever for guiding the Crown in view of any recommendations we might make.

(Lord *Askwith.*) Exactly. The Crown has no information whatever at its disposal beyond a very narrow report of the Committee for Privileges, and the Ministers who advise the Crown know nothing about it either; there is no material upon which they can form a considered judgment.

(Earl of *Kintore.*) We shall really go behind the Committee for Privileges.

(Mr *Badeley.*) If this Committee should make a general report in favour of limitations in the practice of calling peerages out of abeyance, the result would no doubt be a curtailment of the number of claims which come before the Committee for Privileges.

(*Chairman.*) Yes, clearly any limitations we recommended which were acted on would strike out a good many of the more speculative claims.

(Mr. *Badeley.*) The procedure would be that this Committee would report to the House, and then the House, if it adopted the Report, would send a message to the Crown containing the terms of any Resolutions to which it comes upon consideration of the Report.

(*Chairman.*) I do not see that we should do more than report that in consequence of what we state in our report it might become necessary to reconsider and probably extend the form in which the Committee for Privileges reports, indicating how it would have to be done but leaving it there. Then the House, if it adopted our report, would, I suppose, pass some direction to the Committee for Privileges to limit its report in accordance with what we had said. However, these points evidently will require to be considered very carefully before we report. Probably the witnesses—the representatives of the Crown at any rate—had better consider that side of the question too, and bring before us what the existing practice exactly is and what loopholes there are for undesirable results.

(Lord *Askwith.*) There are other points that will arise. There is the question of what I may call syndicated peerages. There may be two claimants, both descendants of the original grantee, dividing up three or four Baronies—one of them taking two, and the other one. The Crown knows nothing about how these things go. There is another form of case in which, supposing a man is a Peer and a junior descendant comes to him and says: "You are already a Peer; there is this Barony in our family, may I

claim it and will you withhold your objection?" the Peer is in great difficulty. He does not want to be a dog in the manger, but at the same time he parts with a Barony in his family and allows a junior member of it to claim it and become a Peer.

(Lord *Hylton*.) We seem to be on very delicate ground, because the Crown, up to now, as I understand it, has always claimed the right to call out any peerage in favour of a co-heir. I think we ought to be very careful in our report. We cannot, of course, limit in any way the power of the Crown.

(*Chairman*.) No. As far as the Crown is concerned our report is merely a pious opinion. Passing on to the third item on the Agenda, the witnesses indicated seem to be very suitable witnesses, though they cover rather a wide category. "Representatives of the Crown in peerage matters" is one class, and "Representatives from the Heralds College" would appear to be really the same class, because they deal with the practice of recognising the rights to these dignities. "Representatives from the Record Office" will deal more with materials.

(*Mr. Badeley*.) Yes; the Heralds College is also concerned with materials.

(*Chairman*.) What is the position of the Home Office? Is that the particular Department that advises the Crown?

(*Mr. Badeley*.) The petition for a peerage to be called out originally lies, through the Home Secretary, to the Crown.

(*Chairman*.) That evidence will be relatively short?

(Mr. *Badeley*.) Yes: then junior Counsel to the Crown in peerage matters, Mr. Geoffrey Ellis, who knows a great deal about peerage matters, would give evidence if the Committee wish it.

(*Chairman*.) I imagine we may have to have him more than once, because if there is anything we do not know we may want to ask him to inform us.

(Mr. *Badeley*.) He is mainly responsible for the Memorandum on abeyance which is now before the Committee.

(*Chairman*.) Then another class of witnesses is "Officials of the House on Procedure." That evidence will be similar to the evidence of the Home Office?

(Mr. *Badeley*.) As far as procedure goes—yes; but we have a fairly wide knowledge of precedent and history which might be useful to the Committee.

(*Chairman*.) What do "Historians" mean?

(Mr. *Badeley*.) Their evidence would really deal with the origin and history of peerages in which abeyance has occurred.

(*Chairman.*) Is it the suggestion that authorities of note such as Mr. Round, should come and give us information?

(Lord *Askwith.*) He is in very bad health, but is very knowledgeable.

(*Chairman.*) In order to make any use of such evidence we should have to prepare some sort of minute of the things we wanted to be informed about, and then find an historian who knows.

(Mr. *Badeley.*) I think one or two historians would be very glad to come and give their views on the history of peerages in the past, if you wish to hear them.

(*Chairman.*) We ought to consider the interests of any known claimants who are petitioning at present, but have not got much further—whether they are entitled to be heard, lest we might report something that would knock their petitions out before they had an opportunity of getting on with them. Are there many such cases?

(Mr. *Badeley.*) I believe there are one or two now before the Law Officers of the Crown and several others stand referred to the Committee for Privileges.

(*Chairman.*) Perhaps, first of all, the representatives of the Crown will inform us, amongst other things, as to the possibility of there being any claimants, who have already filed petitions, who should have some sort of opportunity of putting their particular points before us so as to save their position. As to the historians, I think we shall have to wait until we find out what we want to know.

(Lord *Askwith.*) Should any message be sent to the Heralds College to inform them of the appointment of this Committee, and to suggest to them that they might prepare any evidence they desire to lay before it?

(*Chairman.*) That is a good idea. Is there anything which any other noble Lord would like to suggest at this stage?

(Mr. *Badeley.*) I suppose the sittings of the Committee will be strictly private, and there is no suggestion of the Press coming in?

(*Chairman.*) None whatever, so far as I am concerned. Surely our sittings should be private; otherwise we should be very much fettered. We can always open it afterwards on some occasion when we may have something to say publicly.

(Lord *Askwith.*) If it is a private Committee, would it be allowable for a representative of the Crown in peerage matters to be present?

(*Chairman.*) Do you mean except when he is giving evidence, as a person to assist us?

(Lord *Askwith.*) The Crown is very much concerned in this enquiry.

(*Chairman.*) I do not see why he should not be present, unless there is some practice or rule forbidding it.

(Mr. *Badeley.*) There is no such rule or practice.

(*Chairman.*) He might be here as *amicus curiae*, so that we could refer to him in the same way as we refer to Mr. Badeley. That may mean taking up a great deal of his time.

(Mr. *Badeley.*) He is a Member of Parliament.

(Lord *Askwith.*) We cannot command his attendance.

(*Mr. Badeley.*) No, but he is very much interested in the matter before this Committee.

(Lord *Askwith.*) He has an official appointment.

(*Chairman.*) I do not suppose it is meant that he should be here in a sense to watch the interests of the Crown, but merely in attendance so that we might at any time ask him a question, or he might save our time by saying: "That has been already decided," or whatever it might be that we were not aware of. In the sense of coming here to watch the interests of the Crown I should hardly have thought that was appropriate, and, consequently, if he attended when we let him know that he could be of assistance that might meet his difficulties.

Adjourned to Wednesday, 14th July, at 11 *o'clock.*

Die Mercurii, 14° Julii, 1926.

LORDS PRESENT:

MARQUESS of BATH.
LORD KINTORE (Earl of Kintore).
LORD STANLEY of ALDERLEY (Lord Sheffield).
LORD HYLTON.
LORD REDESDALE.
LORD SUMNER.
LORD MUIR MACKENZIE.
LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

Mr. A. J. EAGLESTON, C.V.O., is called in and examined as follows:—

1. (*Chairman.*) You are an assistant secretary to the Home Office and Registrar of the Baronage?—Yes.

2. Is there any particular department of the Home Office that attends to such matters as this, so far as the Home Office does attend to them, or is it part of the routine business of yourself or whoever is in your department concerned with it?—This business falls to the division which I am in charge of, which takes the miscellaneous business of the Home Office and particularly the business relating to honours.

3. Then, as far as the Home Office has records and precedents at all in this matter, they are in the department of which you are at present the head?—That is so.

4. I see in your memorandum you point out that the Home Secretary's duties in this connection are strictly ministerial?—Quite so. Document 3

5. Petitions from claimants to be co-heirs to a barony in abeyance praying for the determination of the abeyance in their favour have, of course, to be presented to His Majesty through some Secretary of State?—Yes.

6. And the constitutional practice is that petitions which do not specifically relate to the work of some other department are undertaken by the Home Secretary, and he submits them to His Majesty?—Yes, that is the constitutional practice.

7. The first thing that happens is that the petition is received by the Home Office. I suppose it is an established practice well known to the profession that the claimant's advisers must begin by presenting the petition at the Home Office?—Yes, petitions are usually received by post in the ordinary way.

8. Then I see your first step is to consult Garter?—Yes.

9. Your precis says when a petition of this kind is received at the Home Office, Garter is informally consulted?—That is so.

10. What is exactly meant by "informally", and why do you do it informally?—There is no constitutional necessity to consult Garter. It is done purely as a matter of convenience. The Secretary of State is under no obligation to do it.

11. Then for his own advantage he sends the papers to Garter and asks for his opinion?—That is so.

12. Which I suppose is communicated in writing?—It is communicated to us in the ordinary way.

13. Is it the practice to attach to the petition the proof that is forthcoming, or what is there to show at the beginning of the whole proceedings what evidence will be eventually relied upon?—I do not think there is any settled practice in the matter. Sometimes these petitions may be quite informal.

14. Simply praying that the barony may be called out of abeyance, but not stating what the evidence is?—More usually the petitions in abeyance cases are carefully drafted, and set out at any rate the details of the claim. But the Home Office never asks for evidence, and we should present any petition to the King if it were in respectful terms.

15. Sometimes you get a petition which really does not enable Garter to say on the face of it what proof is likely to be forthcoming, but generally you get a petition which does indicate how the descent is traced?—Quite so. Of course, Garter, as a genealogist, would know something about the grants of peerages which are well known to be in abeyance, and probably would be able to form an opinion from his own documents whether the applicant really was in the line of descent or not.

16. That is a point which I had in mind to raise at some time. You speak about Garter as a genealogist knowing the peerages that are in abeyance. Is the subject historically so far worked up that it can be known in advance what the total number of possible peerages in abeyance that may be claimed is, or is it merely that a considerable number have been discussed over and over again and some of them simply have the habit of falling into abeyance every now and again?—I am sorry I am not quite certain that I have caught the point of your Lordship's question.

17. You say you refer the petition to Garter for his advice, because his skill as a genealogist would enable him to judge what the nature of the proof must be and what the probability of a successful proof must be. Is that right?—I should hardly put it in that way. I should say rather that the object of referring it to Garter is to enable him to give us an opinion as to whether there is a *prima facie* case or not. For instance, he might be

able to say " This man's descent does not bring him within the abeyance at all ". As a matter of fact in these abeyance cases reference to Garter is hardly so necessary as in the case of dormant peerages. In the case of a dormant peerage we constantly have either ill-informed or frivolous claims, as to which Garter can say at once " This man has no claim at all " as the claim is barred in some way, or he can say " Assuming the descent is as he makes out, he has a *prima facie* case." In the abeyance cases I do not attach very much importance to the reference to Garter, but it is sometimes convenient because although the petitions are usually well prepared and it is clear that the applicants have had proper advice, at the same time it is useful to refer to Garter as it enables us to form a rough opinion, at any rate, before referring a claim to the Attorney-General.

18. I think the thing that might be important to us is this: Is the position of Garter such that in an appropriate case he might give such advice as would nip that petition in the bud at once?—No, I think we should hardly reject a petition on Garter's advice alone, without referring it to the Attorney-General.

19. Then I think we may pass on to the next subject. Garter gives you such assistance as he can, which is often valuable at that stage?—Yes, but is more valuable, as I say, in cases of dormant peerages than in cases of peerages in abeyance

20. After that the Secretary of State formally refers the Petition to the Attorney-General, endorsing the petition in the usual form " to report his opinion what may properly be done thereon, whereupon His Majesty's further pleasure will be declared."?—That is so.

21. That is a regular step which, I suppose, is taken in all cases?—That is so.

22. Then the Attorney-General considers the petition and the evidence produced in support of it. Does that include calling on the party to furnish some evidence or only such evidence as the party may have?—The Attorney-General has a free hand. He would certainly call upon the parties to furnish further evidence if he thought it desirable.

23. Then in a sense it is a trial before him according to the directions he may give?—Yes, something in that nature.

24. And he may hear petitioners' Counsel. Then he submits to the Secretary of State his report to His Majesty on the petition which the Secretary of State lays before the King. The Attorney-General has no department. Does the Attorney-General keep any records or are the records of what he has had before him and what he advises with regard to them, simply left in the papers that are remitted to him and which he then hands on to the Home Office?—I do not know the practice of the Attorney-General's Department. I should be very much surprised if he does not keep a record, but what he submits to

the Home Secretary is a somewhat lengthy report dealing seriatim with the points in the petition.

25. I do not know whether the so-called Attorney-General's Department considers itself staffed on a scale which would involve keeping records of that kind of thing?—The Attorney-General has a small staff. We, at the Home Office, are in constant communication with his chief clerk.

26. If we are trying to exhaust all the records in any given case, is it likely to be of much service to us to ask the Attorney-General's Department to assist us, or can we set that aside?—I think if you want to find out the process which the Attorney-General goes through with the petition, certainly it would be of assistance to consult his Department.

27. That I follow, if it is merely to ascertain how he discharges his functions; but supposing that in order to understand the subsequent proceedings in a given case, which has been disposed of but which is a precedent, we wanted to exhaust all the materials that there were, is there anything which the Attorney-General is likely to have or may we disregard his papers?—I could not say for certain, but I should doubt it, because we always send the Attorney-General's report to the House of Lords. I do not know, of course, and nobody but the Attorney-General himself or his staff could say, what records he keeps besides the report he sends to the Home Secretary.

28. At any rate, your experience does not encourage us to suppose that we need trouble the Attorney-General?—I should think it doubtful.

29. Then if the Attorney-General reports that in his opinion the petition should be referred to the House of Lords, it is endorsed "His Majesty being moved upon this petition is graciously pleased to refer the same to the Right Honourable the House of Peers to examine the allegations thereof."?—Yes.

30. I see there is a note on your precis: "In cases in which the claim is so clear that the Attorney-General considers it unnecessary that the matter shall go to the Committee for Privileges, he has so reported to the Crown, e.g., Beaumont 1895." Thereupon is that treated as advice to His Majesty that it need not be referred to the Committee for Privileges?—There again I put that note in rather for the purpose of exhausting the possibilities. I cannot recall any case of an abeyance in which the Attorney-General has reported that it should not be referred. In the case of dormant peerages, as I was saying, there are constantly frivolous or ill-prepared claims.

31. When the Attorney-General is of opinion that a claim is frivolous or that there is some bar which excludes it and which has been overlooked, he can and does advise that there is no occasion to refer it to the Committee for Privileges, and then there is an end of it, I suppose?—That is so.

32. Supposing this Committee were to report that some rule of practice should be adopted with regard to baronies called out of abeyance so as to limit the number that could be admitted, upon whatever ground, I want to find out what is the stage at which that rule could be applied for the purpose of seeing whether the case should proceed or not—whether it would have to be a recommendation to be taken account of, if at all, when the claim came before the Committee for Privileges or whether in the Attorney-General's hands it could be sifted out upon the ground that it did not comply with the recommendation that had its origin with this Committee and had been adopted?—It would depend to some extent on what the rule was. Ordinarily, of course, we do not know officially that the petitioner is a co-heir until it has been established by the Committee for Privileges, but, no doubt, if this Committee recommended a restrictive rule and it were adopted it would be possible at the Attorney-General stage to say to the applicant : " Even if you prove your case you will not fall within the category of cases in which a favourable recommendation is made to His Majesty."

33. That is to say : " You are outside the recommendation that has been adopted and, therefore, there is nothing to be gained by letting your petition proceed."?—Precisely.

34. Then that is the first official point apparently at which someone could intervene who could properly sift out the cases that were hopeless?—Precisely.

35. And so prevent further waste of time and money. That point would be in the Attorney-General's hands?—Yes, it would be in the Attorney-General's hands.

36. When the petition has gone to him and before it comes back with his report?—Yes.

37. I suppose the report in such a case would be, that it is so clear that the claimant could not succeed that there is no occasion to refer it to the Committee for Privileges at all?—Yes.

38. (Lord *Stanley of Alderley*.) May we have an exact definition of the difference between dormant peerages and peerages in abeyance?—A dormant peerage is a peerage case, as I understand it, in which the petitioner claims the actual peerage ; he claims to be the heir to the peerage. A peerage in abeyance is one of the old baronies by writ which has fallen into abeyance, because the last Peer left two or more daughters and no son, and no one in that case has an actual claim to the peerage.

39. To take a recent case—the Dukedom of Somerset—was that nominally a dormant peerage until it was decided in favour of the present Duke?—Yes. The Duke claimed to be actually the Duke—not to be one of the co-heirs.

40. It is alleged to have been sleeping but it never has been asleep in fact?—No.

41. It has only to be determined in whose behalf it awakes? —That is so.

42. (*Chairman.*) I suppose it might be dormant for two or three generations?—Undoubtedly.

43. A dormant peerage is a case where the line of male heirs has been lost sight of, but still the rightful heir, subject to his proving who he is, would be entitled to the peerage on that proof being satisfactorily given?—Undoubtedly.

(Lord *Stanley of Alderley.*) He has been an existing Peer at all times though it has not been determined who he is.

44. (*Chairman.*) He and his fathers. Whereas with regard to a peerage in abeyance the peerage is in no one. It is somewhere indivisible among a number of persons who cannot divide it?— That is so; it is suspended.

45. And without the assistance of the grace of His Majesty it has to remain there until all of the co-heirs are buried except one?—It is suspended until either all the co-heirs but one die out, or until the King is pleased to decide on one of the co-heirs.

46. I suppose theoretically it might be suspended until they all died out?—Yes.

47. But when it is to heirs general it is very difficult to say there is no heir general in the whole world?—It is difficult, but there are some cases where you can trace it down. These peerages usually trace to descendants of two or three sisters, and it is possible to eliminate them sometimes.

48. (Lord *Stanley of Alderley.*) A dormant peerage may be dormant for two or three generations, but the man who finally proves his right to the peerage, let us say the sixth or seventh baron, traces back through his predecessors who never carried the peerage but who, according to the proof which he has submitted, were entitled to be considered Peers?—Precisely, they were Barons though nobody knew it.

49. They were Barons but never so styled?—Yes.

50. (*Chairman.*) The next point dealt with in your precis relates to the functions of the Prime Minister, and you say: "The resolution of the House of Lords confirming the finding of the Committee of Privileges is forwarded by the Clerk of the Parliaments to the Lord Chamberlain. He lays it before the King as one of the Lords with White Staves, and forwards it to the Prime Minister 'for such advice as he may wish to tender to His Majesty.' Officially the Home Secretary is not concerned in the matter at this stage;" and the matter passes officially, I suppose, into the hands of His Majesty's principal adviser, the Prime Minister?—That is so.

51 There we are in the region strictly of the advice of the most responsible Minister of the Crown?—Yes.

52. Which, I suppose, does not constitute a series of rules or precedents in this matter?—That I cannot say. The Prime Minister's staff are the only people who can speak as to that.

53. Then you say: "The Home Office papers contain little information as to the practice of successive Prime Ministers in dealing with abeyances or the principles underlying such practice. It should, however, be added that the Secretary of State has not infrequently been informally consulted by the Prime Minister before he came to any decision, and that of late years the tendency has been for such informal consultations to become more frequent. They have usually been in regard to individual cases, and for this reason, as well as from their unofficial nature, there is little or no information of general importance to be derived from them." That, I understand, is your general experience?—That is so.

54. Now we come to an interesting case given in your precis which relates to the year 1915 and which approaches what we are engaged upon. You say: "There is one case, however, in which the Prime Minister's Private Secretary"—that was, I suppose, when the present Earl of Oxford and Asquith was Prime Minister?—Yes, Mr. Drummond was the Private Secretary.

55. "Consulted the Home Office unofficially with a view to endeavouring to lay down some general principles for dealing with abeyances, and after considering the question the Secretary of State attempted to advise, and the following note (prepared in the early part of 1914) was sent to the Prime Minister in 1915." It does not seem to have been very rapid procedure but, no doubt, you had other things to think of. Then you give what was the suggestion made by the Home Secretary at that time?—Yes.

56. "In connection with a number of peerage claims which are now in progress Mr. Drummond raised the question whether any principles can be laid down to guide the Prime Minister in advising the Crown to call a Barony out of abeyance in favour of a particular claimant. An examination of the precedents does not disclose the existence of any consistent rule by which such questions have been decided in the past. Mr. Drummond suggested three possible courses: (1) Where there are two or more co-heirs and they select one of themselves by agreement, the barony should go to the person agreed upon. (2) The barony should continue in abeyance until it vests in one individual by the failure of other co-heirs. (3) The barony should go to the co-heir who represents the senior line of descent." If I follow that, the first suggestion is that, subject to His Majesty being pleased to do anything, the parties agree among themselves who is going to be the Baron?—Yes, that is the first suggestion.

57. It seems a little anomalous. The second suggestion is that nothing should be done until the course of nature solves the question without further official intervention, all being dead but one.—Quite so.

58. The third suggestion is that the barony should go to the co-heir who represents the senior line of descent. That is a purely arbitrary, though possibly very meritorious, rule?—Yes; strictly speaking there is no seniority of co-heirs in abeyance cases.

59. No. The note says: "The question is not one in which the Home Office is specially qualified to advise nor could the Secretary of State express any decided opinion, but at Mr. Drummond's request the matter has been considered. The Secretary of State is disposed to agree to the first of the suggested rules provided that the co-heir selected by agreement is in other respects well qualified for the dignity. Any such agreement would have to be carefully scrutinized to ensure that the consents were *bona fide* and not given for consideration." If that were so, I suppose the question whether the candidate was well qualified for the dignity would be a matter for the Prime Minister to consider?—Yes, it would.

60. The note goes on to say: "As regards the second rule"—which you say is No. 3 above; that is the one about the senior line of descent?—Yes, that is really the third alternative, but the second is not a rule.

No, it is not. "As regards the second rule, however, it seems doubtful whether, when a barony has been long in abeyance and there are a number of co-heirs, the barony should be called out of abeyance at all except in special circumstances. The sentimental feeling as to the virtual extinction of an old barony does not seem to have much force in cases where it has already been in abeyance for a long period of years"—I do not know, but I should have thought it might make it of more value—"nor does the fact of a great deal of money having been spent in hunting up pedigrees and fighting a case before the Committee of Privileges seem to constitute a sufficient ground for reviving a barony in such cases. The difficulty of making a selection between the different co-heirs also seems a strong reason against revival except in special circumstances. None of the co-heirs has any more claim than any other, and seniority by itself does not seem a sufficient ground. As the disposal of these baronies is entirely in the King's discretion, to lay down any principle of selection by seniority would be to alter the present law in favour of the senior co-heir and might give rise to embarrassment in particular cases. It seems rather a question whether these cases of long abeyance and a number of co-heirs should not be governed by the same sort of considerations as govern the creation of new peerages—that is, there should be special grounds of public services, etc., which would justify the Sovereign in ter-

minating an abeyance in favour of one co-heir as against the others." There is, I think, another consideration that might be mentioned and that is, that to lay down a rule like that would in effect fetter the prerogative, because at present it is in His Majesty's discretion whether to call it out in favour of the senior or the junior.—I think the rule could only be laid down by the King himself or with the King's approval and, therefore, it would hardly be fettering the prerogative.

61. Perhaps the term is inappropriate, but it seems to me it would be, as long as the rule was adhered to, settling in advance the discretion that might be exercised under the prerogative on each occasion.—Yes, but the rule could only be a rule as to the recommendations made to the Sovereign. It could not fetter the Sovereign as to making an exception.

62. No. Then the note continues: "To sum up, the Home Office is not in favour of encouraging claims for the termination of baronies in abeyance, which often involve large expenditure in establishing pedigrees; especially where the abeyance has lasted for centuries. Exception might be made on the ground of public services or where there is agreement among the co-heirs and the co-heir selected is well qualified." That, I suppose, represented the Home Office official view at that time?—That is so.

63. And, so far as you are aware, it is their official view still, and nothing has been done?—Nothing has been done and, so far as I am aware, that is in principle the official view at the present time.

64. That, I think, exhausts the precis that you have given us, and I think we have covered the ground as to the particular functions that the Home Office performs. Some of their Lordships may wish to ask you questions upon it.

65. (*Marquess of Bath.*) Your *précis* mentions the possibility of an agreement between the descendants of co-heirs. I do not know whether it comes within your knowledge, but have there been agreements and has the claimant come to an arrangement with his relations, so to speak, that he may go forward with his claim and that they will not interfere by making a claim of their own?—It is hardly within my official knowledge, but it is generally understood there have been agreements in some recent cases.

66. I did not know whether it had come officially before you? —No, I could not say officially.

(Lord *Hylton.*) I think we have had before the Committee for Privileges evidence actually given that specific co-heirs did not claim and made no objection to the claimant.

(*Chairman.*) That is a matter which we must consider at some stage.

67. (Lord *Stanley of Alderley.*) Have there been cases where several peerages have gone into abeyance from the same descent and where those various peerages have been distributed amongst the co-heirs by agreement, one taking one barony and another taking another. I think one case is mentioned in some of our papers—the Barony of Strange of Knokin, where there were two or three different peerages in abeyance all derived from the same ancestor, and those peerages were distributed amongst the co-heirs, one taking one barony and another taking another. One of the cases given is a case where there were four co-heirs but only three peerages to go amongst them?—There have been cases of that kind certainly, and, as a matter of fact, there have been several since this Memorandum was written in 1914. Possibly it might be modified with a view to that now, but we at the Home Office only have knowledge of these cases from seeing the Reports of the Committee for Privileges.

68. *(Chairman.)* I suppose from your point of view, though you are not directly concerned with these things, it would be a matter of gratification to you if we could deal with these cases somehow. I rather gather from your manner that you do not approve of syndicates in these matters?—Yes.

69. Although that subject may be beyond your functions, it is a thing which we must try to get information about more directly?—Yes.

70. (Lord *Askwith.*) I have before me a return which was ordered to be printed on 3rd May, 1923, giving the peerages called out of abeyance, and I notice that in 1871 the Baronies of Botreaux, Hungerford, de Moleyns and Hastings de Hastings were called out in favour of the Countess of Loudoun of the day —all four of them?—Yes.

71. Then I suppose she died, but in 1921 the same Baronies and in addition the Barony of Strange of Knokin and Stanley, were called out of abeyance and divided up beween the Countess of Loudoun and the Viscountess St. Davids?—Yes.

72. From another document, which has also been handed in, I see there were seven ascertained co-heirs and heiresses, because it says : " But as regards Strange of Knokin and Stanley, there were in addition to them seven ascertained co-heirs and heiresses, namely, Lord Jersey, the Duke of Sutherland, Lord Grey de Ruthyn, Lord Romney, Lady Flora Hastings, a Mr. Lubienski and a Miss Kirwan, as well as two undefined groups consisting of the heirs respectively of Anne, successively Lady Chandos and Countess of Castlehaven, and of Diana Lady Baltimore. Each of the ladies who divided these Baronies was heir to one undivided 36th (or, if the issue of Lady Castlehaven and Lady Baltimore is extinct, to one-twenty-fourth) of the impartible hereditament which she claimed."—No doubt that is

so, but the Home Office have not got any official record of it other than the Report of the Committee for Privileges.

73. Assuming that to be the case, is there any reason in the methods that are now pursued why these Baronies, or any more that may be found, should not be divided up between more than two ladies?—That is a question for the Prime Minister rather than for me, but, giving my personal opinion, there is no reason so far as I can see.

74. But the practice appears to have been 50 years ago that they were all given to one lady, and more recently they were given to two. If there were five or ten petitions that method of division might have created five or ten more peerages with members sitting in the House of Lords?—Precisely, and, though a *prima facie* case was made, only four Peerages were issued to the claimants.

(Lord *Hylton*.) If I may make a correction as regards that, in 1871, although Lady Loudoun got some of the peerages, her sister Lady Bertha Clifton, was given the Barony of Grey de Ruthyn, but not apparently for some years.

(Lord *Askwith*.) That was in 1885—14 years afterwards.

(Lord *Hylton*.) The Barony of Grey de Ruthyn was mentioned on both occasions.

(Lord *Askwith*.) That seems to be the first case according to this return in which there was a division between the heirs and it seems to be a new practice coming in; but a little later, in 1903, three baronies were alleged to have fallen into abeyance—the Baronies of Fauconberg, Darcy, and Meinill—and the Committee for Privileges found that there was no record of a Barony of Meinill in the records of the House of Lords, but they decided that two sisters, the Countess of Yarborough and the Countess of Powis, were co-heirs to the Baronies of Fauconberg and Darcy and divided them up between them?—Yes.

75. Is not that, with the exception of the de Ruthyn case which is also called attention to, the first case in which, as far as the records are known, there was a division between co-heirs, sisters, of a number of baronies at the same time?—So far as I know, yes.

76. In 1916 the process was carried still further because again you had a division of the Baronies of Burgh and Strabolgi?—There were three Baronies, I think, there—Burgh, Strabolgi and Cobham.

77. Those were divided up, not between two persons, but among three?—Yes.

78. In addition to that, for the line of one of them a special attainder was reversed by Act of Parliament?—Yes.

79. After 1916, in 1921, came the case I have already alluded to of these Baronies of Strange of Knokin and Stanley and Botreaux, Hungerford, de Moleyns and Hastings de Hastings?—Yes.

80. So it has become a regular practice when a Peer dies in whom a lot of baronies are centred, and they fall into abeyance, for the claim to be made to divide up those peerages among a number of heirs?—Yes.

81. And thus to bring a large number of new members into the House of Lords instead of the one member in whom the Baronies were previously centred?—Yes.

(Lord *Stanley of Alderley.*) May I call attention to the Memorandum marked 1 on page 7 to show this is not a modern practice, because there is given the case of the Barony of Abergavenny and Despencer. Apparently, in 1604, there was recommendation acted upon and these two peerages were divided among two rival claimants.

82. (Lord *Askwith.*) The Abergavenny case is a very curious one. I will look at that, as I do not know the particulars of it at the moment. I will put my question in this way: At any rate for the last 30 years the practice of dividing up baronies has been very prevalent?—It is safe to say that it has increased, at any rate.

83. You would not consult Garter King of Arms, who has no official standing as being adviser to the Crown?—Except in the sense that he is the natural adviser to the Government on genealogical and heraldic questions. As I say, the matter goes to him informally, and it is purely for the convenience of the Home Secretary.

84. Is this procedure which you have mentioned always followed?—Yes.

85. In 1923, a lady who claimed to be Baroness Cromwell, died before any patent was issued to her. Was this procedure followed with the present Lord Cromwell? Was the matter sent to the Attorney-General or referred to the Committee for Privileges?—Lady Bewicke-Copley's case was referred to the Committee for Privileges.

86. She died before it was called out of abeyance?

(Lord *Hylton.*) Yes, but the Committee for Privileges heard the case and reported upon it.

87. (Lord *Askwith.*) But she died before she got her patent. After the King's pleasure had been taken on the Committee's Report to call the Barony out of abeyance in her favour she died before the patent was actually made out. Why was a writ issued to Lord Cromwell before all this procedure was gone through, because he was a new co-heir?—That I cannot say.

88. You do not know anything about it?—No, I have no personal knowledge of it.

The Witness is directed to withdraw.

(*Chairman.*) We have Mr. Geoffrey Ellis here, and it is suggested that we might ask him about the practice of the Attorney-General's Department. Then we should have completed this general evidence from the Home Office and the Attorney-General's Department, and could after that go on to the precedents and the state of peerage law.

Mr. R. GEOFFREY ELLIS *is called in and examined as follows* :—

89. (*Chairman.*) You are a Member of Parliament for Wakefield City?—Yes.

90. You are a Member of the Bar, and Historical adviser to the Crown and Junior Counsel in Peerage cases?—Junior Counsel. I have no appointment as Historical Adviser.

91. You have been present while Mr. Eagleston gave his evidence, and you noticed the questions that we put to him to ascertain what the practice is in the Attorney-General's Department with regard to petitions in abeyance cases. Will you tell the Committee what the different steps are, what the materials used by the Attorney-General are, and also if there are any records kept in his Department that it would be proper for us to make any inquiry about?—I understand in the old days, that is, up to about 5 or 6 years ago, it was the practice for the whole of the preparation of these cases to be carried out actually in the Attorney-General's Office. At the time I became Treasury Counsel precedents were looked up and a good deal of discussion followed about the practice. It appeared clearly that the circumstances were not such as enabled the Attorney-General to get all the information that he ought to have, and conferences were held with your Lordships' Judicial Officer and also with the Treasury Solicitor, and a new practice was instituted. The practice was put on the basis of an action at law, and Mr. Cooke, who had been for many years the solicitor representing the Treasury, but who came in only in the later stages of the case, was then constituted solicitor for all purposes, and the moment any papers are received from the Home Office those papers are sent to Mr. Cooke, and Mr. Cooke then instructs the Treasury Counsel, and the whole proceedings from beginning to end proceed in the ordinary way, as if Mr. Cooke had been instructing on behalf of any other client. Two kinds of cases arise—those which finish in the ordinary course before your Lordships' House, and those which do not. The whole of the records in both cases are now kept and stored and belong to the Crown, and are available for your Lordships or anyone to whom the Attorney-General may accord

permission. The Attorney-General desires me to say that he was wishful to give your Lordships any possible help on this occasion that he could, but he also desired to have it recorded that up to the stage when these cases come before your Lordships' Committee for Privileges the Attorney-General is advising the Crown confidentially and he does not, with great respect, owe your Lordships any duty until he comes before the House or until your Lordships send for him to give you any information; at the same time he wishes that your Lordships should know everything connected with the matter. When the papers come to the Attorney-General's Department from the Home Office the whole question is immediately examined from beginning to end with such material as accompanies the petition. The petitioner is then informed, if the material is insufficent for the Attorney-General to arrive at an opinion in order to be able to advise the Crown, that the material is insufficient and he is then required to put in further material, such material as in the opinion of the Attorney-General is sufficient on which to arrive at some sort of opinion. The material then comes to us in the form of papers and documents and answers to questions. When in the Attorney-General's opinion there is sufficient material for him to prepare a report, a report is drafted and the petitioner is advised that the Attorney-General proposes to hold a judicial inquiry. The petitioner then appears, either by counsel or by solicitor or agent or personally, before the Attorney-General and states his case and shows what evidence he has to justify his petition. After the hearing has taken place, the Attorney-General then makes up his mind on the petition and advises the Crown in the course of a report, which reviews all the evidence which has been placed before him. The report may recommend one of three things: (1) That the petition and the evidence is not such as to justify the Crown in proceeding any further, and the Crown is then recommended not to grant the prayer of the petitioner; (2) that the whole matter is of sufficient importance to be referred to your Lordships' House; or, (3) it may also recommend the Crown (as is done on exceptional occasions when there is no point in doubt) that the abeyance ought to be terminated without further reference to any other authority. The papers and other documents which come in in all these proceedings—and it is the duty of the Attorney-General and those helping him to procure all relevant documents from the Record Office and such other places as are considered necessary, as would be done in an ordinary case—are put together and are all kept and are available for any inquiry. That applies to every case, whether the case goes on or not, and, of course, we have had a great many documents in cases which have never gone beyond the Attorney-General. Those records contain material which is obviously exceedingly valuable for the future.

92. Is that the end of your statement? That is all I have to say on that point, if I may just add something on the question of

the difference between dormant and abeyant peerages. What we regard in the Attorney-General's Department as the distinction between such peerages is that we should say a dormant peerage is in existence, and is vested in some individual, but is not in use, and a writ has ceased to be issued in respect of it; whereas an abeyant peerage is one which has been held—a peerage in fee—by an individual, and on his death descended to co-heirs, but, being an impartible inheritance, cannot be shared by those co-heirs and so remains in the custody of the Crown, if I may use the term, until the heirship comes to one individual only, or until the Crown decides which of the co-heirs in its absolute discretion it shall take or refuse.

93. (Lord *Askwith.*) What was the case where there was no opinion given—the Beaumont case?—No opinion given by the Attorney-General?

94. Where the Attorney-General said it ought to be called out of abeyance at once?—That was the Cromartie Earldom?

95. (Lord *Stanley of Alderley.*) Wherein does the inquiry before the Attorney-General differ from that which subsequently takes place before the Committee for Privileges? Does the Attorney-General deal with all the evidence which is subsequently dealt with by the Committee for Privileges?—Yes, so far as he receives information, but his object is only to be satisfied that there is a *prima facie* case.

96. What I may call a Grand Jury case?—That would be a good comparison, but I hope it is a little more thorough.

97. (Lord *Hylton.*) That procedure must involve a good deal of duplication. You speak of the petitioner first submitting to the Attorney-General all his papers and his evidence, and then comes the Attorney-General's report, and later on the Attorney-General has a judicial inquiry; so you have the same thing twice over?—No, we do not have the inquiry before the Attorney-General until the papers submitted have been examined. He cannot hold an inquiry until the Department have seen the papers and got at what the case is said to be.

98. But the petitioner has to submit his papers to the Attorney-General first, and then he has to come to the judicial inquiry with his papers?—Yes, but the judicial inquiry resolves itself into a very short hearing, because the Department have all the material and the enquiry is simply a series of questions and answers. So far as abeyant peerages are concerned, really it is the friendly help of the Crown in endeavouring to save everyone concerned a considerable amount of trouble and expense by pointing out the nature of the evidence which ought to be available.

99. (Lord *Askwith.*) When the petitioner puts in his evidence Counsel for the Crown may point out to him that there are gaps

which would preclude his case being successful unless he can fill up those gaps. Then he may take his papers away and come back a year or two afterwards with the gaps filled?—That may be so. Further than that, the Attorney-General feels that these cases cost the country a good deal of money, and therefore his procedure, whereby these facts are pointed out, tends to lessen the length of the proceedings before your Lordships' House, because he thinks that he ought to do all he can beforehand to make the case as short as possible.

100. (*Chairman.*) The material is mostly documentary, I suppose?—That is so.

101. And, therefore, if the claimant has not got his documentary material, he is not in a position to go any further. He hands in his material and then it is examined, the petitioner is sent for, any supplementary material is asked for, and he is told this, that, either the other gap must be filled or he cannot get any further?—That in effect is what we do.

102. Of course, if the petitioner takes that wise opportunity of stopping, he has saved some of his own money and most of the country's money?—That is so.

103. If the claim were to go on the Attorney-General would appear, the Junior Counsel to the Treasury in Peerage Cases would appear, and the Solicitor to the Treasury would appear—all at the public expense?—Yes.

104. Then the Committee for Privileges would sit at their own expense, and at the expenditure of public time, which is supposed to be very valuable. It seems to be a most rational scheme that you have?—We have gone a little step in helping.

105. One thing is quite clear, and that is that your sifting process affords a very important stage for practical purposes of enforcing any recommendations, if any were ever made and adopted?—If your Lordship pleases.

The Witness is directed to withdraw.

Ordered:

That the Committee be adjourned to Wednesday, 28th July, 11 o'clock.

Die Mercurii, 28° Julii, 1926.

LORDS PRESENT:

LORD KINTORE (Earl of Kintore).
LORD STANLEY OF ALDERLEY (Lord Sheffield).
LORD HYLTON.
LORD REDESDALE.
LORD SUMNER.
LORD MUIR MACKENZIE.
LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

Sir RONALD WATERHOUSE, K.C.B., C.M.G., C.V.O., is called in and examined.

106. (*Chairman.*) You are Private Secretary to the First Lord of the Treasury?—Yes.

107. The particular point about which we wanted to have your help is this: We have been tracing the procedure steps by which in cases of petitions to call a peerage out of abeyance the matter ends by being put before the Sovereign, which we understand passes through the Department of the First Lord of the Treasury? Yes.

108. I suppose, as far as your Department is concerned, it begins by the receipt of a report from the Committee for Privileges?—Yes, that goes to the Lord Chamberlain, and it comes from him to us.

109. The Lord Chamberlain sends it on to you?—Yes.

110. Does he send it on with all the papers—the notes of the evidence and the petition—or is it simply the report?—He simply sends on the report.

111. That report shows that the petitioner so and so, claiming to be so and so, has proved his descent?—That is right.

112. And that his petition was that the barony might be called out of abeyance in his favour?—Yes.

113. Who is the next person to consider it?—It depends rather upon the circumstances. There is not any absolutely regular procedure about it at all. At that juncture it is entirely in the discretion of the First Lord of the Treasury—the Prime Minister.

114. Do you mean it is brought to his attention and then he gives what directions he thinks fit for his own assistance?—Yes.

115. If he has not the materials sent him, but has only the report, the only question for him is what advice he is to give the Sovereign?—No, because, although he only gets that report from the Lord Chamberlain, he can get the material, and, in fact, he would have the material certainly.

116. Then in the natural course he would get the materials on which the case had proceeded, perhaps from the Attorney-General's Department?—Yes.

117. Does he have that material reported on or is it a matter that he has to go into himself?—He has that reported on. The report that he gets from the Lord Chamberlain leaves it entirely in his discretion, it simply says: "Here is the report proved through the Committee for Privileges. Now it is up to you to submit to the King if you think fit." At that juncture he has to take what steps he can before submitting it to the King.

118. Then he informs his mind on any materials that suggest themselves as to the proper course to be adopted?—Yes.

119. Then is the ultimate advice a Cabinet matter or is it personal to the First Lord?—It is personal.

120. And his advice is, of course, accepted by the Sovereign?—Yes.

121. So that for practical purposes a decision is taken at that stage by the First Lord, which ends the matter?—Yes.

122. Are any records kept of the considerations that have weighed with the different First Lords, or the terms in which the advice was expressed?—No. That raises a very difficult problem indeed, because it raises the whole question of what happens to the papers which are personal to a Prime Minister on retiring. For example I have myself been through four administrations and all the papers for that period exist, but nothing exists before, so that if there were any question now about a case that had been submitted say in the Coalition time, there would be no evidence whatever, if it were required.

123. It could only be got if the ex-First Lord of the day preserved his papers and was willing to make them accessible?—Yes.

124. At any rate in the last four administrations those papers are kept in your Department?—Yes.

125. (Lord *Askwith*.) Could any Prime Minister sweep them away?—That again is a very difficult question, because each Prime Minister has taken action on that according to his own views. I do not think it will ever happen again probably, because, of course, these are records which have a greater concern than a personal one.

126. (*Chairman*.) The materiality of it for our purpose is to find out, if it can be done without indiscretion, what grounds there may have been felt for dissatisfaction with the practice as

it has gone on for about 100 years at any rate, and what views First Lords have recorded or what steps they have taken either showing that they were content with the existing practice or that they would wish that it might be reconsidered. I think we have been furnished with an instance by the report of the Home Office, in which some question was put to Mr. Asquith when he was Prime Minister and some record was kept then of a query but not of any answer—it did not get to the stage of an answer. Do you know of any material of that kind?—No.

127. Then among the different courses which in practice are pursued to advise the Sovereign not to take any action or to advise the Sovereign to call a peerage out of abeyance in favour of the petitioner or what not, it rests entirely on the judgment of the First Lord at the time?—Yes.

128. And what First Lords have done is, of course, on record, and we can draw our own inferences or leave them alone as to why they did it?—Yes.

129. Any recommendations on a subject like this which is before us will ultimately be recommendations upon which the First Lord of the day would form his own judgment as to whether he should act upon them or not?—Yes.

130. (Lord *Stanley of Alderley*.) I think there are instances where several baronies have been held jointly, if I may so term it, between several representatives of the co-heirs, and where those baronies have been divided up amongst the various applicants. There has been a suggestion anyhow that there is some sort of agreement among the applicants that they should make such division. Is that fact before the Prime Minister, and does he accept that personal agreement between applicants and act upon it so that he approves in fact of such bargain?—That would certainly be before the Prime Minister and he would accept that.

131. It is up to him to accept and, in fact, he has accepted this bargain between those who have appeared before the Committee for Privileges and put forward petitions?—Certainly.

132. Such agreement possibly being to the detriment of others who have not joined in the petition?—Yes.

133. The Prime Minister in the past has approved or, at any rate accepted such bargain?—Yes.

134. (*Chairman.*) In the first place we are bound to assume that that was for reasons of State?—Yes.

135. (Lord *Redesdale.*) Then does this mean that, when a case has actually been dealt with by the Committee for Privileges, for a given time it rests absolutely in the hands of the First Lord?—It does.

136. In fact, it rests with him for ever, because if he likes to stop it then and there he can do so?—I think so, because there have been several instances of the whole case hanging fire for a

very considerable period owing to that very fact. I mean there were certainly two cases inherited from the Coalition Government, one of which has now been hanging fire for four years.

137. (Lord *Stanley of Alderley*.) Having gone through all the steps up to and including the Committee for Privileges?—Yes.

138. (*Chairman*.) That is hanging fire between the report and the advice to the Crown?—Yes, there may be reasons for that—for instance the position of Ireland; but I merely quote that as an example.

139. (Lord *Stanley of Alderley*.) Would it have been possible for a successive Prime Minister to reverse a decision of his predecessor and act on the report of the Committee for Privileges. Has that ever happened?—Only in this sense, if you can consider that reversing it, supposing his predecessor has taken no action upon it and his successor acts on it, but not in any other sense. He could not reverse a decision.

140. No, but one Prime Minister might reverse the act of another Prime Minister on further facts?—Yes, there is no reason why that should not happen I think.

141. There is no reason why it should not happen 100 years afterwards I take it?—No.

142. (Lord *Redesdale*.) The matter is not held up by the First Lord because he finds himself in disagreement with the decision of the Committee for Privileges, but for some other reason I suppose?—Certainly not for the first reason.

143. (Lord *Stanley of Alderley*.) He accepts the report of the Committee for Privileges as a report on fact?—Certainly. I am only saying this, of course, on the cases that one has been able to judge by.

144. (Lord *Askwith*.) There seems to have been a difference of practice in the reign of Queen Victoria, when certain baronies were left as they were and others were called out. Disraeli, Gladstone and Peel followed different lines. Disraeli, I think, only advised that one should be called out. I understand there is no record whatever left in the Prime Minister's office of any thing connected with those abeyances?—No.

(Lord *Redesdale*.) Would it not be far better under those circumstances that the matter should go first of all to the First Lord and that he should say: "Assuming that the Committee for Privileges finds that this is a good case, then it is one that I should recommend to the Crown." What I mean to say is, the claimants have all the expense and trouble of taking their case before the Committee for Privileges, who then hear it and say whether it is a good case. Then it is taken to the First Lord who, for some perfectly different reason, says "This cannot go to the Crown."

(*Chairman.*) Supposing, for example, when it is in the hands of the Attorney-General, it appeared on the face of the papers or otherwise that it was one of those bargain cases as to which you have spoken, and the First Lord then had it in his hands, he might have the opportunity of saying: "I never propose to advise the Sovereign to act where there is a bargain, and so as long as I am here this case need go no further."

(Lord *Redesdale.*) That would save a great deal of expense and trouble to all parties concerned.

145. (*Chairman.*) On the other hand the petitioner might say: "That is all very well, but I have got my case up; I have got witnesses alive whose evidence I could take, and there may be a change of Government or a change of opinion so I want to get my case taken and disposed of while I have it ready." That is a consideration the other way. What do you say to that?—There is an objection to that I see, if I may suggest it, and it is this: There are a great number of cases comparatively of people who have no idea whatever of the procedure, and if you were to say to them, knowing nothing whatever about it from the point of view of the First Lord, "All right, I have no objection to putting this up provided the Committee for Privileges approve and find it in order," they would at once set the ball rolling and say "We have got a claim and the Prime Minister says he is going to do this and therefore you must get on with it." You would certainly have half a dozen cases more by that method than you have now.

146. Is it within your knowledge that there are a considerable number of cases so limited now in the offing?—Yes a considerable number. There is almost a stock letter in which one replies to claimants from all over the world saying: "If you want to do this, you must put yourself in the hands of a lawyer and proceed, winding up with the Committee for Privileges." All that means a vast amount of money, and you never hear any more about it.

147. (Lord *Hylton.*) I remember a case, the barony of Le Power, a year or two ago, in which the Committee for Privileges reported in favour of the claimant, but no action has ever been taken upon it?—That is perfectly true and that is still subject to attainder.

148. So it does not follow that at present, whatever the Committee for Privileges report, the First Lord of the Treasury necessarily takes action by bringing it before the Crown. The case I have given is a concrete instance?—It is.

149. (Lord *Askwith.*) Was not that an Irish case?—That is so. That is just the case I had in mind when I was talking about Irish cases just now.

150. The procedure by which an Irish peer should be notified as a representative peer of Ireland came to grief because the

official to whom the papers were sent did not exist.—That is just an example.

151. I was on the point of the Prime Minister giving his advice. I presume one Prime Minister might take a great deal of trouble, and another Prime Minister might accept the report of the Committee for Privileges without looking into it. It depends on the personality of the Prime Minister?—Yes.

152. Would you agree with what was said at the time when a Bill was introduced into Parliament for the purpose of the removal of an attainder affecting the Barony of Cobham, when a statement was made by the Earl of Oxford (Mr. Asquith as he then was) on which he was considerably pressed. When he was asked whether the Crown acts on advice in reversing attainders and calling out of abeyance ancient peerages most of which never existed, he replied "It is an automatic process."—With all respect I should not agree with that.

153. That is a wrong statement of what the practice has generally been?—It may have been the practice then, but it certainly is not now.

(*Chairman.*) An automatic process which does not always work.

(Lord *Stanley of Alderley.*) Did not the Earl of Oxford afterwards qualify it by saying that it is a matter for advice?—I think he afterwards withdrew his first statement.

154. (Lord *Askwith.*) Being pressed on the point Mr. Asquith had to admit that these steps were taken by the Crown on the advice of His Majesty's Ministers. But at first he said it was an automatic process, so he could not have bothered about looking into the matter?—I should not admit that in these days.

155. There was a case in 1844 when the Barony of Fitzwalter was claimed by a gentleman named Sir B. W. Bridges, Baronet, who was reported by the House of Lords to be a co-heir, but no action was taken on it; it was not called out of abeyance. That gentleman's heir, I presume, again came forward in 1924 and he showed the line of his descent from Sir B. W. Bridges, and the House of Lords adopted the same form of resolution as in 1844, "that the Barony was in abeyance between the petitioner and the heir or heirs (if any) of Jemima Duke." The Petitioner, H. Fitzwalter Plumptre was summoned to Parliament as Lord Fitzwalter by writ dated 9th October, 1924. In 1924 the advice given would be quite different from the advice given in 1844 presuming that Fitzwalter Plumptre was the eldest heir of Sir B. W. Bridges?—Yes.

156. It would be a change by the Prime Minister of one date as compared with the Prime Minister of another date. There is no general rule?—Clearly.

157. (*Chairman.*) The letters that you get from all sorts of lay people and answer in such terms that the claimants do not go any further, seem to show that there are a great many persons who are interested in this matter in hopes that they may really be members of the most ancient part of the nobility. There is, according to that, actually general interest in the prospect of baronies being called out of abeyance?—Yes.

158. It is only the circumstance that it is a difficult matter and a costly one that you find gets rid of these possible claimants? —Yes. I am talking of people who probably have no conception of the technique of the subject. They do not know who their own relations are, or whether there are any at all, but they know a peerage has disappeared and gone into abeyance, and possibly they think, without consulting anyone at all, they have a reasonable title to it. It is very elementary. They simply write to the Prime Minister and say: "I am the fellow," and they think that may end it.

159. On the other hand do you think there is any substantial body of experts prepared in advance to assist such persons and who make investigations into pedigrees and so forth before they are instructed to investigate any particular claim?—Yes, I have heard that is so.

160. It has not come before you personally?—No.

161. Why I ask this is because the gravity of the question is considerably enhanced if there is not only an extensive number of persons interested in peerages in abeyance, but also a substantial body of experienced persons accumulating material who, when they are brought into contact with claimants, may bring about a petition that is a real fighting petition?—Yes, such cases do rather appear to exist, but generally the more numerous cases are simply cases coming from the Colonies and Dominions.

162. (Lord *Stanley of Alderley.*) From cranks or almost lunatics?—Not always. Naturally on every subject there are those.

163. (*Chairman.*) And they always write to the Prime Minister?—Yes, always on every subject.

164. (Lord *Askwith.*) Do you know any case where a Prime Minister has advised the Crown not to call a peerage out of abeyance?—No, because it simply would lapse. I think the Prime Minister would never advise that. He would simply fail to submit it.

165. He would simply take no action?—Yes.

166. (*Chairman.*) He would tender no advice?—Yes.

167. (Lord *Askwith.*) It simply does not get to the Sovereign? —It has already been presented to the Sovereign by the Lords with White Staves, but any further action in the matter generally awaits the advice of the Prime Minister

168. (Lord *Stanley of Alderley.*) I do not know whether you have read Document I, which we have before us, dealing with the claims of Lady Loudoun and Lady St. Davids, but on page 11 there is this Paragraph : " But it is also understood that pledges had already been given in respect of Lady Loudoun and Lady St. Davids' claims which precluded any action being taken upon the Duke of Sutherland and Lord Jersey's letter." That rather indicates that the Prime Minister's Department does negotiate outside and make enquiries outside, and even with a claimant, because here was a protest from the Duke of Sutherland and Lord Jersey against reviving these peerages, and the Prime Minister of the day found the impossibility of dealing with or answering that letter, because some sort of pledge had been given to this syndicated claim as it appears. That indicates that the Prime Minister is occasionally active in dealing with these matters—not merely considering them on the evidence, but entering into communication with the claimants and others?—I certainly would not admit for a moment it is automatic. The Prime Minister causes whatever enquiries he likes to be made in any direction.

(Lord *Askwith.*) It might not be the Department but the Prime Minister himself.

169. (*Chairman.*) Whose pledges they were you do not know. The Memorandum only says : " But it is also understood that pledges had already been given in respect of Lady Loudoun and Lady St. Davids claims." You do not know enough about that case to say anything about the pledges?—No, I could not say that.

170. That introduces a new element in the consideration. because, if at any stage pledges are given in advance in favour of one claim rather than another, it does seem to fetter the advice which the First Lord will ultimately have to give?—Yes. (*Chairman.*) Perhaps we must get that from someone else.

The witness is directed to withdraw.

Mr. Robert Geoffrey Ellis is again called in and further examined as follows :—

171. (*Chairman.*) First of all, will you give us your definition of what the abeyance of a barony is?—Abeyance is a condition in a barony in fee when the heirship descends on more than one co-heir; in other words, when a barony is in a condition of co-heirship then, because the barony is undividable, you get what is termed abeyance.

172. That, if I rightly understand it, only happens when there is a co-heirship among females?—Or descendants of females. There might be a male representative of one set.

173. It can only begin when there is co-heirship among females, but it may continue, apart from sex, as long as those female lines are unexhausted?—Yes, co-heirship in female lines.

174. So it is a difficulty that only arises where the barony is descendible to heirs general and not limited to heirs male?—It is only in the case of a barony in fee descendible to heirs general.

175. Is there any instance of a barony by patent which is descendable to heirs general, or are patents always made to heirs male, except where there has been a special remainder, such as the recent one of the Rhondda Peerage?—Yes, there is one very famous case which was before your Lordships not many years ago, that of Lucas.

176. That was a barony by patent descendible to heirs general?—That was a barony by patent sanctioned by Act of Parliament, which reviewed and talked definitely in the patent and in the Act about a condition of abeyance, and then said that instead of going into abeyance it should descend to such co-heir as would succeed if it were an office of honour.

177. But with that exception is it in substance the case that the question of abeyance only arises in connection with baronies by writ and sitting?—I do not know of any existing instance where a barony by patent could create a co-heirship.

178. Then the practical question is entirely connected with the old baronies by writ and sitting?—Writ of summons and sitting, yes.

179. I suppose it is possible to tell within narrow limits how many of such baronies there ever were, because we know—or, at least, it has been settled now—what is the beginning of a Parliament in which sitting would count, and that was about 1285?—1295 is the Model Parliament.

180. Therefore it is a closed list of the possible baronies by writ and sitting?—If your Lordship will allow me, I might put it in two ways. It is a closed list of possibles and probables. We know there might be about 90 possibles, but out of the 90, owing to various reasons, probably no more than about 30 or 40 could ever prove a claim, and those 30 or 40 would be very dependent on possibly changed views which your Lordships might take about the kind of evidence which would establish a sitting.

181. I am not speaking now of possible and probable cases of abeyances which might be terminated, but of the possible number of baronies that ever were. I am thinking at the moment of what is the outside limit of seriousness of this question?—I should think so far as one can tell, speaking a little off-hand, there are 60 to 70 at the outside beyond those already known and which have been in question.

182. I suppose genealogy makes steady progress and materials continue to be discovered?—Yes.

183. So it is to that extra margin of 60 to 70 that the contingency of any further discoveries would be limited?—Yes. if one may put it shortly, we can almost tell the moment a name is mentioned what the probability is.

184. Apart from the claims that have been mooted already there is, I suppose, a considerable field of possible claims to call baronies out of abeyance if anyone was sufficiently interested to take them up?—Yes, I am afraid there is. The possible co-heirships as to 60 or 70 would be very numerous indeed.

185. I think it has been said that you never can be quite sure that heirs general are all exhausted?—No, I am afraid we have very many cases in which your Lordships are asked to presume an exhaustion on what we should sometimes regard as rather insufficient proof.

186. When the abeyance has occurred between co-heiresses you have to contemplate a case of each of the co-heiresses continuing a line of her own?—Yes.

187. As long as the other lines are not exhausted the abeyance continues?—Yes.

188. Survival of any one line is not a ground for terminating the abeyance, at any rate it does not automatically terminate the abeyance, as long as any of the other lines continue?—The abeyance continues until the co-heirship comes into unity, if I may use the expression, that is until there is only one heir left.

189. Yes, the state of co-heirship is the antithesis to there being no co-heirship and of the title being gathered into one line? Yes, into one line.

190. That may, of course happen within a very few years or it may never have happened at all so far?—That is so, but you might get a position which you got in the recent FitzWalter case.

191. I have been reading through these papers which are before the Committee and I find that a good many very learned writers are extremely interested in pointing out that there never ought to have been any baronies by writ and sitting at all. That is roughly the thesis of a good many of them.—They are all agreed, I am afraid—that historically there is no defence to a barony by writ and sitting.

192. This, as I gather, is through ignorance of the law on the part of Sir Edward Coke and the subservience of other lawyers to him. Now for 300 years it is settled law that there are such baronies?—It is certainly settled law.

193. So it is no use our discussing this, but if there had been no such baronies there would have been none of these abeyances? —None.

194. Therefore we must regret the advice that was given by Sir Edward Coke?—I am afraid that is the position. It is really a conflict of history and law. Law has decided certain things and has been followed, and we cannot go back on it now.

195. So that what we have to face is the question of what is to be done with the abeyances which cannot legally be terminated otherwise than by petition to the Sovereign and the exercise of the rights of the Crown?—Yes.

(Lord *Askwith*.) May I suggest that the law which brought it about is very well put in a book called " Peerage Law in England ", by Sir Francis Palmer. He says on page 38 : " The law is well settled that if a writ of summons to Parliament, in the form usual in the case of temporal peers, has been issued to a commoner, and the person so summoned has, in response to a summons, taken his seat in the House of Lords, and it does not appear that the summons was issued to him merely as eldest son of a living peer or peeress in respect of one of his parents' peerages, the person so summoned and sitting is to be taken thereby to have acquired what is called a barony by writ descendible to the heirs general of his body, and this is so even though the summons was issued to him by mistake."

196. (*Chairman*.) That is, I suppose, the leading authority on the subject?—That would create another rather curious condition. If a writ were to-day issued by mistake and there was a sitting in response thereto, that would create a barony by writ which might be a barony by writ of the year 1926.

197. (Lord *Askwith*.) If the writ only was issued and the person did not sit but a descendant of his sat, the cases that have been decided seem to show that that creates a right by writ and sitting?—Yes. You could then have an abeyance of a modern peerage resulting from a writ of summons and sitting constituting a barony in fee.

198. (*Chairman*.) Would an accident on the part of the appropriate Department on a sufficient scale have the effect of getting round all those difficulties that arose in 1911 about a great creation of peers?—Yes, and those baronies would be baronies in fee and capable of going into abeyance.

199. Yes, and the holders would be capable of sitting and voting?—Yes.

200. (Lord *Stanley of Alderley*.) Is there no method of remedying such an accident before the sitting takes place?—The barony would not be complete unless the sitting took place in response to the writ.

201. But the recipient of this accidental writ would not be entitled to go to the House and sit without question?—No, your Lordships would be entitled to question his right to be there, as was done with the Wensleydale Patent of 1856.

202. (*Chairman.*) But the House would not be entitled to decide against it?—Not unless there was something in the patent accompanying the writ, if there was a patent, which would be contrary to law. If he presented his writ as a return to the summons without any patent, according to law your Lordships would be bound to receive him.

203. (Lord *Askwith.*) If he sat before somebody got up to say he was not to come in, would that be conclusive?—I should not like to say what your Lordships would decide.

204. (Lord *Stanley of Alderley.*) Do I understand that such a one has a right to come even if people object to him sitting?—If the writ is in order, he has a right to come and present it to the House and ask for permission to sit.

205. (*Chairman.*) And, if objection is not taken, he has a right to take his seat?—He has a peerage descendible to heirs-general.

206. (Lord *Muir Mackenzie.*) Could he take his seat in the House of Lords without introduction?—Yes, I believe he could. I believe the usual custom when a baron by writ appears is for the Lord Chancellor to explain to the House the circumstances in which he comes to the House, and then he is placed, after he has taken his seat, according to the appropriate precedence.

(Lord *Askwith.*) Supposing it had been decided that ladies could sit as baronesses in the House of Lords, could a lady, like the Baroness Beaumont, say, whose ancestors sat by writ and sitting, come down and present a writ and take her seat without question, or would she have to be introduced.

207. (Lord *Muir Mackenzie.*) She would not require an introduction because she was succeeding a former peer, but the practice of the House is that on the first appearance of a peer he has to be introduced?—With respect, I agree, but that would not alter his legal rights.

208. (*Chairman.*) It is a most interesting speculation.—I have nothing to go on with regard to the question which Lord Askwith put; I have no precedents I can cite.

209. I see in a memorandum which the Committee have before them, and which I think is yours, that the Barony of Camoys in 1838 was regarded as settling the law at last in a way which is very conveniently summarised?—We usually take that as the root of the modern law.

210. The memorandum says that it was referred to the judges and they gave an opinion. Was that in Chief Justice Tindal's time?—Yes.

211. "In the following year they gave a definite opinion that (a) the Crown may confer an abeyant barony on whomsoever of the co-heirs it pleases; (b) if the lines of all co-heirs but one become extinct then only the surviving co-heir is entitled to

the Dignity, and entitled as of right. The reply of the Judges in the Camoys claim established a rule of law in abeyance which has since been followed without question. The position may now be stated in law as follows: It being established that a barony in fee was created, is in existence, and is now abeyant: (a) Any co-heir may petition the Crown for a termination of the abeyance in his or her favour, and any termination establishes a new root of title." Precisely what do you mean by "a new root of title"?—If, say, two generations hence there was an extinction of the chosen line the peerage would then become abeyant as if there had been no termination. All the lines of the co-heirs that had existed before would then have a right to come in again.

212. And the whole thing would begin over again?—As from the first abeyance.

213. So that the termination of an abeyance only settles the matter as long as the line of the person in whose favour it is terminated continues?—Yes, if that line becomes extinct, then the peerage goes into abeyance again among all the existing co-heirs tracing from the original grantee.

214. The memorandum goes on: "(b) The Petitioner must employ all available means to trace the pedigrees of all other co-heirs to the barony in order that the Crown may be advised as to the persons among whom its royal favour is sought to be exercised." I suppose "all available means" depends upon the circumstances of the case and of the Petitioner, and, perhaps, on the Committee for Privileges?—It depends very much on the view your Lordships take of what is put before you.

215. Then "(c) The Crown may choose any one of the co-heirs. Seniority of line and fraction of co-heirship imply no prior claim. (d) The Crown need not terminate the abeyance. The co-heirs have no right to a termination, the act of termination being entirely a matter of Royal grace and favour. (e) If the abeyance be terminated the place of the person summoned in the House of Lords is determined by the original date of creation of the barony." I think it follows from (c), as I see specially laid down in another part of the memorandum, that on the termination of an abeyance the Crown cannot grant the abeyant barony to some stranger?—No.

216. It can only be terminated in favour of someone within the limits of the abeyant barony itself?—The barony belongs to the co-heirship and there can be no grant by the Crown of the barony outside the co-heirship.

217. I think that is the best way of putting it. It belongs to the co-heirship and is merely hung up until the Crown calls it out of abeyance or the co-heirship determines by the survival of only one of the descendants of one of the heirs?—That is the position.

218. (Lord *Askwith.*) Because it is an indivisible inheritance? —Based on that theory that it is indivisible, only one individual can be called to perform the duties belonging to it.

219. (*Chairman.*) I do not understand why among males in connection with a barony the senior is the heir, and among females seniority does not affect it, but they are all co-heirs. Is it founded upon anything except that it is so?—I think historically it might be said to be founded on the fact that a male could perform all the duties of the fief in the old days, both attendance at war and at council, but when there were females the fief was distributed.

220. (Lord *Askwith.*) In the early earldoms did not it pass through the female when the doctrine of *esnecia* existed?—There is some doubt about that doctrine of *esnecia.*

221. It is obsolete now perhaps, but one or two instances are given by Doubleday of earldoms passing through the eldest female?—I think all that was done in those cases was to say that the Crown considered that the *caput* went with that portion of the fief which passed to the eldest female and that the husband or the son of the eldest female might be regarded as representing the old dignity or the head of the fief. The real point is that the Crown had to find somebody who could perform the duties attaching to the whole fief and carry out all the feudal obligations.

222. (*Chairman.*) I think it follows from these rules which have been accepted for 90 years or so, that first of all the hands of the Crown are entirely free?—Within the limits of the co-heirship.

223. The possible action is to terminate in favour of someone within the limits of the ownership of the dignity, or not to terminate it at all?—That is the only alternative.

224. But within those two alternatives the Crown is entirely unfettered?—Quite unfettered.

225. In practice the Crown has apparently not been guided more by one consideration than another in the choice of co-heirs —neither by the consideration of seniority of line nor of fraction of co-ownership—and, although it is not said so, is there anything to show that the Crown is not perfectly free to be guided by the character or the service or the age of the particular co-heir preferred?—So far as one can judge from history, those are factors which were invariably taken into account in earlier days.

226. And there is nothing in the precedents to limit that now? —No; in fact in the seventeenth century there would have been no termination of an abeyance at all unless those people asking for the termination of abeyances were in such a position as would justify them in becoming Members of your Lordships' House.

227. And being on the right side?—Not altogether that, but having sufficient property to justify their asking for position.

228. Being territorial magnates and so able to maintain the dignity?—Yes.

229. That being the position of the matter, it being in fact almost entirely discretionary in the Crown within the limits of the ownership of the dignity, any recommendations intended either to unify the practice or to place it on a simpler footing would at any rate be within the limits of the prerogative to adopt or not to adopt?—Yes, you can never get away from the prerogative. That is the one thing that finally decides.

230. And any recommendations in this respect would have no tendency to fetter the prerogative. The prerogative is already free with the one limit that you mentioned, and the Crown has already adopted some of those limitations for itself on suitable occasions.—Nothing can limit the prerogative in this matter but an Act of Parliament.

231. (Earl of *Kintore*.) And then the Sovereign would have to waive the prerogative, possibly.—Yes, presumably the Sovereign would have to consent to the Act of Parliament.

232. There are precedents for that, I think?—I believe there are.

233. (*Chairman*.) The act would have to name the Crown as covered by the enactment, or otherwise it would be deemed not to touch the Crown.—I think the Crown would have to be expressly named.

234. (Lord *Stanley of Alderley*.) Has not any Act limiting the prerogative to have a special message from the Crown authorising it to be brought in?—That is so; in the case of an Act of Parliament dealing with restitution of titles and honours the Crown introduces the Bill.

235. (Lord *Hylton*.) In matters affecting the Duchy of Lancaster and the Duchy of Cornwall, we always get a message to the House that the Sovereign and the Prince of Wales surrender their rights.—We had it in the House of Commons last night on the Mining Industry Bill, where in dealing with royalties the question might come up of the Crown's assent to dealing with the Crown's property.

236. (*Chairman*.) We need not be afraid in adopting a recommendation as to it being preferable to call out a particular co-heir on this ground or on that ground or as to it being preferable not to terminate abeyances in certain cases, of it being supposed to be a suggestion that the prerogative should be fettered, because it would in fact fall within the exercise of the prerogative in previous cases.—With respect, I should say it could only be regarded as a factor which ought to be brought before the Crown in exercising the prerogative, not in fettering it.

237. (Lord *Askwith.*) Giving the Crown information?—Yes.

238. (*Chairman.*) It would be a recommendation for the purpose of assisting in the exercise of the prerogative?—Yes.

239. And it could not be criticised as going beyond what is proper between subject and Sovereign?—No. I presume any recommendation would first of all state the fact that the prerogative was such, and other things were factors in dealing with it

240. I do not know whether you have had to consider this question of recommendations directed to settling a practice in this matter. As far as I can make out, there have been very frank criticisms upon some of the cases in which abeyances have been terminated, on the ground, for example, that so many centuries have elapsed, or on the ground that the particular claimant was nobody in particular or on the ground that the claimant had none of the original lands of the barony, if there ever were any, and so on. Has it come before you at all to consider whether in practice any limitations to meet those criticisms would be advisable?—Not exactly in that sense, but after Mr. Asquith, as he then was, made the statement that he did, or very soon after that, there was revived the practice of putting in the Attorney General's Report to the Crown that a petition for any peerage in abeyance was in the King's discretion to accept or refuse. That was restored to the Report in order that the Rule of Law might be before the Crown, because it was deemed that the reply that had been given was wrong in law.

241. But have you had any occasion to form what could be called an official opinion as to whether it is desirable to take one line or the other?—Expressly, no.

242. It is to be hoped no more abeyances will be terminated which have already lasted 400 years; but unless you have some official connection with the subject I do not suppose you would care to express any opinion on that yourself.—I am afraid any expression of opinion on my part would be an expression of opinion which we had discussed amongst ourselves, and hardly a legal one, but one which anyone might come to who had given thought to the cases; it certainly would not be official.

243. It may be said that a limitation of time—a short one—would put an end to all the apprehensions with regard to these possible 60 peerages to which claimants for a termination of the abeyance may turn up any day?—Yes, it would entirely.

244. Those would be wiped out?—Provided the limitation were a statutory one.

245. I see what you mean. A hopeful claimant might always come and prove his claim, conceiving that his superior merit would induce the First Lord of the Treasury to advise the

Sovereign in his case not to observe the recommendation.—Or, if your Lordships will allow me to say so, his interior influence —I am afraid that is a factor which has operated.

246. We are not contemplating, of course, anything but recommendations which could be acted upon by the First Lord in advising the Sovereign.—Yes.

247. (Lord *Askwith.*) As I understand it, without a statute, if this Committee recommended that no peerage should be brought out of abeyance after a certain period, so long as the First Lord acted upon it and so advised the Crown, these claims would lie fallow; nothing would be done upon them and they would be set aside, as Sir Ronald Waterhouse said, in the Prime Minister's Office.—I think if that Resolution existed and had been officially put before the Crown as a Report, the Attorney General would then of course take notice of it and advise the Crown that such a case came before him—if it got as far as him—and that Resolution existed and it did not appear that it would be advisable to refer the case to the House of Lords.

248. Assuming this Committee report in such terms to the House of Lords and the House of Lords resolves in the form in which the Committee suggests, then that would be on the Journals of the House of Lords and would also be a matter which ought to be called by the Attorney-General or the Lord Chancellor of the day to the attention of the Prime Minister of the day.—I think it would have to go further than that. The Attorney-General would have to take notice and say in his Report: "This is the date of the claim, and in view of the Resolution of your Lordships' House on such and such a date it would appear to be inadvisable to refer the claim to the House." Of course the Crown could even then take what action it deemed right; but that certainly ought to be recorded if such a Resolution exists.

249. (*Chairman.*) To save your time, instead of asking you to go with us through all the details of the different cases, which of course we have before us in two Returns, for one of which Lord Askwith asked, of the peerages which have been called out of abeyance, I would like to ask you this summary question: May we take it that certain writers are pretty accurate authorities upon what I may call matters of detail? For example, we have been supplied with Mr. Doubleday's Appendix H to the Complete Peerage. No doubt you know that book?—I know it well.

250. Is that a work of high authority?—It is a good general history, but I am afraid I cannot subscribe on matters of law to some of the details mentioned and some of the deductions drawn.

251. I rather wanted to know whether that is to be read *cum grano.*—The authorities are not unanimous.

252. I see, for example, that some of the noble Lords, in connection with one of the proceedings of this kind before the Committee for Privileges, were dealt with what is called "faithfully". I wondered, therefore, whether Mr. Doubleday was a writer with strong views of his own or strictly balanced.—He certainly holds strongly to his opinions.

253. I suppose with Palmer's "Peerage Law," if I read that, I shall not be going far wrong?—No, Palmer's "Peerage Law" is a good summary. He does not take sides, and the summaries are good.

254. Then there is a book called "Pike's Constitutional History of the House of Lords"?—Peerage lawyers would regard Pike's History as a standard work.

255. Of course in these matters the name of Mr. Round is very familiar. Is he to be classed with Mr. Doubleday, or elsewhere?—Most of us would regard him as the very first authority on any peerage question on which he wrote, and on which he gave his authorities.

256. He is a very accurate historian?—Most learned and most accurate.

257. Although the results are not always satisfactory to the persons mentioned?—He is a very learned man in regard to all these ancient documents, and would certainly be accepted as an authority by peerage lawyers as well as by historians.

258. Then there is the great authority of Lord Redesdale's Committee on the Dignity of a Peer, which I suppose contains everything down to that date?—It contains the whole history, as then explored, but I am not sure that to-day, in view of the recent decisions in the last hundred years of your Lordships' Committee, you can accept even that report.

259. But as historical material that is a good volume to read?—Historically until then there is nothing better.

260. (Lord *Hylton*.) I suppose you would say that in the decisions of the Committee for Privileges and in the ultimate decision of the Sovereign in calling Peerages out of abeyance or not, there has been rather a leaning towards giving the Peerage to the representative of the elder daughter. There have been cases where the younger daughter's family have got it, but there has been rather a leaning to giving it to the elder daughter's family?—I would not say that, but what really happens is this: As a general rule it is usually the elder daughter, or the elder line, which claims—not always—and, when it has claimed, there has been rather a disposition on the part of any other co-heirs not to contest it.

261. So the elder daughter's representatives have had on the whole the decisions in their favour in the majority of cases?—I would not like to say that without examination and looking into all the cases. There may be other factors as well as that

262. (Lord *Redesdale.*) May the Committee be furnished with a complete list of the sixty odd peerages that are in abeyance, with the date in each case when they fell into abeyance? Is it possible for that list to be prepared?—I am afraid the Attorney General could not do that.

263. Cannot it be done?—No; the estimate is really based on known writs that have been issued to individuals. They are all recorded in the "Complete Peerage." You will find in the "Complete Peerage" the names of every existing peerage, every dormant peerage, and every one which might possibly be regarded as abeyant.

(*Chairman.*) Mr. Badeley tells me that it can be extracted for us.

(Lord *Redesdale.*) I thought it might be convenient for the Committee to have such a list.

(*Chairman.*) Yes, it is a list of those which are possible sources of further claims. Document 8.

264. (Lord *Redesdale.*) A bare list of titles and the dates when they fell into abeyance?—That, of course, is the opinion of the writers of the books taken from the writs that are known to be in existence.

(*Chairman.*) Probably it will be a very useful guide for the purpose.

265. (Lord *Stanley of Alderley.*) Although there are round about 60 which may be extinct or in abeyance, there are a certain number of peerages by writ at present in the hands of peers?—Quite a number.

266. And many of those might go into abeyance, so when we say there are 60 such peerages which might cause trouble to a Committee for Privileges, there are others which cannot do so at present, but may in the future cause trouble?—Yes. I was referring to peerages which have never been the subject of a decision by your Lordships, and never openly held.

267. (*Chairman.*) Those in hand now may still fall into abeyance in future?—There are some members of your Lordships' House who hold baronies by writ, obscured, of course, by a higher title, but none the less in existence.

(Lord *Redesdale.*) The reason I ask for a list with dates is that it might be very helpful in determining a date if the Committee were to make a recommendation later on.

268. (*Chairman.*) Yes, as to how many years we might recommend to bring about the desired result?—Practically all would be before the year 1350.

269. (Lord *Stanley of Alderley.*) In fact, there have been very few creations of peerages by writ since the latter end of

the fourteenth century?—Speaking from memory, a few up to and a number in the reign of Henry VIII., and one each in the reigns of Elizabeth, James I. and Charles I., but the last was really a mistake but still valid.

270. But it is still possible to create peerages by writ at the present day, though it is not done?—Yes.

271. I think the peerage given to Lord Cromwell the other day was a peerage by writ?—He received a writ of summons as the heir of the lady in whole favour it had been intended to terminate the abeyance of the Cromwell Barony of 1490.

272. As a rule, these questions that have come before the Attorney-General's Department are referred by the Crown to the Committee for Privileges, but there is no obligation to refer them?—No. The Crown has occasionally acted on the Attorney-General's report alone.

273. And still does so?—And still does. You mean if a mother who held a peerage has died, leaving two daughters, the Crown has then chosen one or the other?

274. But in a very dubious case could the Crown say, "We are satisfied this is a case where it ought to be given," and give it without referring it to the Committee for Privileges? Would the Crown say, "We are satisfied with the evidence of descent, and, therefore, will not trouble the Committee for Privileges"?—Two questions might arise then. First of all, the Crown would have referred the petition to the Attorney-General in any event and been warned, if necessary, and, secondly, if your Lordships were not satisfied with the evidence of descent you could always question the right of anyone to come to the House.

275. (Lord *Askwith*.) I have here Palmer's "Peerage Law in England," and on the question of usage he says: "Peerage law consists for the most part of rules evidenced by long-established usage—usage which has prevailed from time immemorial, or has at least the sanction of some centuries. As points of peerage law from time to time arise, the question asked is always, 'What has been the usage in such cases?' Once an ancient and well-settled usage is ascertained it will govern the case as evidencing the unwritten law. For example, the rule that an hereditary barony is created by writ and sitting thereon is the result of usage. So is the rule of abeyance in regard to the descent of a barony by writ, and the power of the Crown to call such a barony out of abeyance. So is the power of the Crown to summon the eldest son of a peer during his father's lifetime in his father's barony. The rules as to the status, rights, and privileges of a peer are to a large extent founded on usage. Indeed, Lord Campbell, Lord Chancellor, went so far as to say (*Berkeley Case* (1861), 8 H.L.C. 79) in the House of Lords that 'peerage law depends entirely on usage

both as to power of the Crown and as to any claim that may be made by a subject.' But this is to overstate the truth. Though the unwritten law of usage largely predominates, there is a substantial element of statute law, as the summary of Acts above given shows. Non-usage: This may afford quite as cogent evidence of the law as usage." Do you agree with that?—Yes, I should agree with that, certainly.

276. Taking what happened in early times, is not the law, that abeyance exists absolutely, founded now upon such usage that you could not upset it and say it could not exist?—Yes, you cannot upset the law to-day, as the Lord Chairman remarked just now.

277. Is it sufficiently established, without a resolution of this Committee, that 1295 is the first model Parliament, and that a claim for a peerage could not go back to an earlier date?—I am afraid your Lordship must not ask me to decide what your Lordships might do in the future.

278. I am asking for your opinion in view of the fact particularly that within the last century 1265 was given for the Baronies of Ros and Despenser, 1273 for the Barony of Mowbray, and 1290 for the Baronies of Hastings and Segrave?—I think none of those Parliaments were full Parliaments, and, historically, ought not to be treated as such.

279. As far as Peerage Law goes, and the falling of a peerage into abeyance, and a person having a right to be one of the abeyant claimants, should not it be said that no claim ought to be based upon any Parliament prior to 1295?—I think, in view of your Lordships' decisions, that would be a very reasonable thing to do, and it could be done logically on the decisions come to in the last 15 or 20 years.

280. Take it that we have formally established that there is a usage for the doctrine of abeyance. I want to call your attention to this passage which occurs in Lord Redesdale's Report on the Dignity of a Peer: "Letters patent state the extent of the grant which they create; but a writ of summons is, in itself, merely personal; and it seems to be only an inference of law, derived from usage, which has extended the operation of such a writ beyond the person to whom it was directed. When usage is supposed to have first warranted this inference of law is a question which it may be fit for the House deliberately to consider; and to fix a point of time before which the evidence of issue of a writ, and of sitting in Parliament under that writ, shall not be deemed sufficient evidence of the creation of an hereditary dignity of peerage; otherwise claims may be made which have not been thought of for centuries. The Committee who made the Report of 12th July, 1819, have supposed that the statute of the 5th of Richard the Second might be considered as tending to fix that point of time." And the report that is

quoted runs as follows : " This statute of the 5th of Richard the Second, combined with the statute of the 15th of Edward the Second before noticed, may have given a more fixed character to the legislative body than it before had; preserving . . . . to the temporal Peers, then in possession of the dignity, hereditary titles, qualified wherever the title had been qualified by its original and known creation, and in other cases descendible to all the heirs of the body of the then Peer, or of his ancestor first summoned, and under whom he claimed his dignity." Lord Redesdale suggests that the 5th of Richard the Second should be taken as the place before which you should not allow any abeyant peerage to be claimed. What do you say about that?—I am afraid I could not give you any definite opinion on that, except, with all respect to Lord Redesdale's report, it is a conclusion you might come to, but I am not sure the evidence which one possesses would justify you either historically or legally. I think it is possible what was in the mind of the noble Lord who drafted that report at that date was, that it was very near the period when the first barony by patent was granted.

281. We have here a very interesting opinion which is given by the Attorney-General in 1763 on the Botetourt peerage case. Have you read that?—Yes, I have.

282. It is pointed out that this is a calling out of abeyance after a very long period?—Yes.

283. Since the Botetourt case has not that been taken advantage of—have not there been a very large number of callings out of abeyance of peerages that have been in abeyance for scores of years?—Yes, I think all have come since the Baptist Hatton period. It is discussed in Disraeli's " Sybil."

284. The Botetourt peerage was in 1764, and that is not hundreds of years, which is the period alluded to as creating peerage law?—I think it was again the subject of a claim in 1803. There were two claimants.

285. But before the Botetourt case no peerage had been called out of abeyance for a very long period?—I think the Darcy Barony had been in abeyance in the beginning of the seventeenth century.

286. That was not in abeyance at all. The King was evidently in great doubt what he should do, and he tried to give a new title?—That new title was what the King gave, but, in view of later decisions, I think you would have to date it back to the recognition of the abeyance.

287. With the possible exception of that doubtful case there were no peerages before the Botetourt case which have remained in abeyance for a long period and then been called out?—I believe none whatever.

288. Since that date you have the usage creeping in, or attempting to creep in, to go back, as in one case, 547 years?—Yes, and the periods have been material recently; we have had 400 years and 500 years. The Strabolgi case is an example of length.

289. This is a comparatively modern usage?—Yes, within the last 100 years.

290. Would it be possible for this Committee to suggest that a practice which had existed for a thousand years before the Botetourt case should be again had regard to, and that peerages should not be called out of abeyance if they had remained abeyant for periods, say, of more than 50 years?—I am afraid it would be only 500 years and not 1,000 years.

291. A usage for 500 years, I will grant that?—No full Parliament until 1295. That certainly would be a historical fact.

292. It is a new usage which has crept in and may be an abuse?—That would be, if I may say so, for your Lordships to decide, and hardly for me. The facts are there and they disclose that up to a certain period.

294. Would you agree that this usage is comparatively a modern usage?—In the last hundred years.

295. One hundred as compared with 500 years?—Yes, 100 or 120 years—certainly four generations one might say.

(Lord *Redesdale.*) Probably as a direct result of education and printing. Before that sort of date there was no stuff available to the general public in the way it is now available, and that is probably why it has arisen.

296. (Lord *Askwith.*) I do not know; they kept their documents very carefully in the old days.—In the last 40 years knowledge of all these things has spread very much, and there are many more peerage and pedigree hunters than there used to be, with greater success to the Record Office. It is much easier now to obtain the help of documents and much cheaper than it used to be, because they have all been collected together. In the old days they were in separate buildings, but now they are all collected in the Record Office, and it is easier to get together your pedigree; and pedigrees also can easily be got at as the result of the cases which have been before your Lordships when different co-heirships have been traced and so on.

The witness is directed to withdraw.

Mr. G. Proby is called in and examined as follows:—

297. (*Chairman.*) You are an Assistant Clerk in the Judicial Department?—Yes

298. As I understand, you have given special attention to the whole of the Peerage matters that pass through the Department?—The details of the clerical work, and so on, I do under Mr. Badeley.

ocument 1. 299. We have here a precis of the evidence that you are prepared to give, and we also have two Memoranda, 1 and 1A, one of which is called "Memorandum dealing with the question of abeyance in the Earldoms of Salisbury and Warwick and the Baronies of Ferrers, Bourchier, Compton, Montagu, Montacute, Monthermer and Pole of Montagu" and the other "Precedents of recommendation by the House to the Crown which may be held to touch upon the prerogative of the Crown." I understand that you are acquainted with the contents of those Memoranda and have taken part in the preparation of them?—Yes.

ide p. 77, 376.

300. Personally I do not think it necessary to take you through all these matters?—I think most of the ground has been covered already.

301. But I should like to treat you as a dictionary to look points up in, and therefore if any noble Lord or you yourself think there is anything to which our attention ought to be directed we will be pleased to take it from you. The terms of reference to this Committee are not limited to baronies?—No they are not.

302. But I see in the papers with which you have furnished us the question whether an abeyance can occur in an earldom is a moot point still?—It is a moot point.

303. Also, as I understand, there is no definite case in which it has been actually raised in connection with an earldom?—It was raised in the Norfolk case, and in the case about the Earldom of Oxford, but in both cases the Committee were able to decide the claim against the petitioner without having to decide the question whether an earldom could fall into abeyance.

304. Then the result is it still remains a moot point?—It still remains a moot point.

305. Because, although it has arisen, the point has been given the go-by?—It has. I think it must have been decided in the recent claims to the Earldom of Salisbury and Warwick, which were put in by Lady Loudoun and Lady St. Davids, in which cases were actually lodged, but those claims were subsequently withdrawn.

306. So there is no decision there?—No.

307. And the first decision has still to come?—The first decision is to come.

308. What is the theoretical ground for saying an earldom is not affected by abeyance?—You mean from the point of view of law?

309. Yes. It is suggested that we should confine our attention to the baronies, which are the practical question, but the terms of reference being so wide I would rather like to know whether the short answer upon that ground is to say " We do not deal with earldoms for the following reason," or whether the matter is in such a condition legally that it would be proper for us to deal with it although the cases have not come forward for decision?—I can only offer my opinion with the greatest diffidence. I think either course is open to your Lordships. I certainly do not think that in any recommendation that you may make there could be any harm in calling attention to the fact that in the future it might be decided that abeyance did exist in earldoms, and that the Crown might be called upon to decide in the case of earldoms the question which it has frequently had to decide in the case of baronies.

310. The question, I gather, is whether abeyance applies to earldoms at all?—That is a question which I take it could only properly be decided by the Committee for Privileges.

311. But that is the nature of the moot point?—That is the moot point.

312. So I suppose there is no reason why one might not say, if there are abeyances in earldoms, that whatever it is proper to recommend with regard to abeyances in baronies would be equally applicable, as far as one can see, to abeyances in earldoms?—I think so.

313. That is a short way out of it at any rate?—It is a short way out, of course in the case of earldoms, with one possible exception, the case of Cromartie, but in that case the harm is done, because Letters Patent were issued in the seventies which purported to terminate an abeyance in favour of a daughter of the last holder of the title. She is still living, but when her son succeeds, the question might have to be decided, and, in that case, it could not be affected by any recommendations of this Committee, because, if it was held that the Crown in acting as it did was acting within its powers, then there is no doubt that the successor of the lady, in whose favour the Crown acted, would have whatever rights the Crown purported to give her.

(*Chairman.*) If that proves desirable to the Committee, what I suggest is that this witness should now be examined in detail by members of the Committee without further taking him through his proof, so to speak. As I know Lord Askwith has been good enough to prepare notes on matters about which he desires to ask the witness, perhaps Lord Askwith will be good enough to take the witness first.

314. (Lord *Askwith.*) The Lord Chairman was asking you about these earldoms and suggested that one way of dealing with the matter would be that the same usage or practice that would apply to baronies should also apply to earldoms?—Yes.

315. Would not that also be enforced by the law which I have already put to Mr. Ellis, and with which he agreed, as to usage and non-usage being the foundation of peerage law, and that if there has been non-usuage that would apply to earldoms?—You mean if there has been non-usage in the matter of calling earldoms out of abeyance? I do not feel it is a matter on which I can express an opinion. The point you are suggesting is that the Crown, through the failure to exercise the power which it may possess for a very long period, has forfeited that power?

316. Yes. I put this to you : "As usage," says Coke (Inst. 1, 81, *b*), "is a good interpreter of laws, so non-usage—Where there is no example—is a great intendment that the law will not bear it, for, saith Littleton, if any action might have been grounded upon such matter, it shall be intended that some time it should have been put into use "?—I do not feel that is a matter on which I am able to express an opinion.

317. Sir Francis Palmer says that on non-usage the question of Lord Wensleydale not being allowed to sit was also founded. "It has been solemnly decided by your Lordships," said Lord Campbell in that case, "in the exercise of your unquestionable jurisdiction, that the Crown cannot make a peerage for life with a right to sit in this House, and the *ratio decidendi* was that no instance could be adduced of a peer sitting in this House in right of a peerage granted for life only." That is the fact, is it not?—It is a question whether some of the earlier patents without a limitation were life peerages, but it was held in the Wensleydale case that they were not.

318. Usage, or rather, non-usage, because the Crown had not created a life peerage and, therefore, the Crown had lost that power?—Yes.

319. And there has been no case of usage in calling an earldom out of abeyance?—There again I would sooner somebody more learned than myself dealt with it.

320. You could not cite one?—I could not cite one, but I imagine there are certain proceedings connected with earldoms in early days which were capable of being represented as a calling out of abeyance, though probably in fact they were not.

321. Do you mean in the 14th Century or as late as the 16th Century?—I should say not later than the 15th Century.

322. But there is no case so far as you know?—Not so far as I know.

323. (Lord *Hylton*.) Except the Cromartie case?—Except Cromartie.

324. (Lord *Askwith*.) Did you hear the question I put about the Botetourt case to Mr. Ellis?—I did.

325. Do you agree with this which comes from Doubleday : "There is a sharp distinction to be drawn between the calling

out of abeyance of baronies by writ before and after the Botetourt case in 1764 "?—I should agree with that. As your Lordship is in possession of Mr. Doubleday's book you will see there is a note on page 754, "G.E.C.'s note on baronies called out of abeyance."

326. Who was G.E.C.?—G. E. Cockayne, a member of the Heralds' College, who began and was responsible for the earlier edition.

327. Doubleday goes on, "Up to that year"—1764—"abeyances had only been determined in favour of co-heirs who petitioned for baronies held by immediate ancestors, and which had been in suspense only a few years"?—I should say that was true on the lines of the question put to Mr. Ellis, with the possible exception of Despenser and Darcy.

328. Those were peculiar cases?—Despenser was a peculiar case. The Darcy case probably was not a determination of an abeyance at all.

329. "In hearing these cases the Committee was mainly concerned with the larger problems of law, the solution of which step by step laid the foundation of the complete doctrine we have to-day"?—Yes.

330. Is it a fact that since the Botetourt case a new usage has crept in of claiming these as ancient baronies?—It is the fact, but I think on that point a close examination of the returns shows that the practice which it is claimed was started with Botetourt has not been uniformly followed, and over very long periods you find the Prime Minister of the day definitely refusing to take the action asked for. The case of FitzWalter is one that has been already referred to is a very good example. That was in 1844, and I think all historians agree is one of the few of those cases where there were very strong grounds of every kind for granting the claimant what he wished. The Prime Minister of the day was opposed to the whole idea and did not grant it. One of the points you want, with respect, to dwell upon in connection with the whole of this matter is that the exercise of the powers of the Crown has been capricious and, in some cases, where a person ought to have got it he was refused, while in other cases where it might be held he ought certainly not to have got it he was favoured.

331. Take the G.E.C. note wherein he makes this remark: "Before the time of George III (passing over the anomalous case of le Despenser) no abeyance had been terminated that had existed more than the space of some 30 years or so; that King, however, in four (Botetourt, Zouche, Ros, and Howard de Walden) out of the eight abeyances he thus terminated, introduced the pernicious practice of reviving the supposed Baronies of men whose estates had been entirely alienated, and whose imagined dignities, assuming them ever

to have existed, had lapsed for a century or more.''—I would agree with that, but I would say the practice, although it originated then, had not been invariably followed, and you could not say—and I am not merely protesting against the use of the word '' automatic ''—that for a very large part of the reign of Queen Victoria there was any probability of a person who claimed a dignity in that way receiving it. I think the case of Grandison is one of rather special interest.

332. Would not Grandison and FitzWalter be a revulsion against the feeling created by what G.E.C. alludes to here: '' It was reserved, however, for the short space of little more than three years (March 1838 to May 1841) to terminate the abeyance of six Baronies—of which five had long been disused, the ' Caput Baroniae '' and all estates belonging to them having been alienated and their very names having become unfamiliar. ''—Those six baronies, or anyhow the greater number of them, were, I think, called out during the Premiership of Lord Melbourne, and the belief is that Lord Melbourne, for whatever reasons he may have had, favoured the practice. A good many of them were Roman Catholics.

333. The names are given here '' Vaux, Braye, Beaumont, Camoys and Hastings.''—I believe the fact is that the Roman Catholics were mostly then on the Whig side and perhaps with special means of recommending their claims to Lord Melbourne; but all that is matter of inference. I have made a list and I can, if your Lordships wish it, give you fresh copies of the return with the names of the Prime Ministers concerned attached to each peerage. I think certain conclusions do force themselves upon one. I think one notices the remarkable fact that Disraeli and Gladstone—both of whom, I think, had a strong sense of history—appear to have been strongly opposed to the practice, and Peel also.

334. That shows, if nothing else, that Prime Ministers from time to time have dissociated themselves from the practice of calling abeyant peerages out which have been abeyant a long time?—Undoubtedly. It is a question of the construction one puts on the facts we have before us, but I should say the rule throughout the 19th Century had been to discourage the practice, though there were certain moments when you got a sudden burst of it. One such moment is that to which your Lordship referred, when Lord Melbourne in an incredibly short number of years called out a large number, and something of the same kind, of course, happened at the beginning of King Edward's reign. I think there is a certain tendency—I do not know what the reason is—for these claimants to appear in large numbers at the beginning of a new reign; it certainly was so in those cases to which reference has been made.

335. Probably with the desire to wear a robe and coronet at the Coronation?—It may be so, at any rate the cases to which

your Lordship refers occurred at the beginning of Queen Victoria's reign, and we had the same thing at the beginning of King Edward's reign.

336. We had five or six peerages called out of abeyance on one day quite recently?—Yes.

337. With regard to those sort of claims I think it is in your precis that the expression is used "syndicated peerages"?—I do not think I actually made use of that expression, but I am familiar with it.

338. Can you give the Committee any information on the line of what you say syndicated peerages are?—The objection as I conceive it to what are called syndicated peerages is not so much that, say, three people all of whom have equal claims receive a peerage. One got that in a less abrupt form before. In the case of Mowbray and Furnivall, Lord Stourton claimed the Barony of Mowbray in 1877 and the present Lady Furnivall, who was the other co-heir, claimed her barony at a later date. There you had a case of two members of a co-heirship dividing what there was; but that is not by agreement. One got something of the same kind in some other cases which are also mentioned in the return—the Botreaux group and Grey de Ruthyn. There a second sister petitioned some years later, after her sister had got the Barony of Botreaux, for the Barony of Grey de Ruthyn and got it. My feeling about that is that the thing may be open to objection, but you do not get there the sort of suggestion that a bargain has been made beforehand, and a number of people who have approached the Crown have agreed to share the titles and have practically extracted a promise from the Prime Minister that each of them is to be granted. That to my mind is the objection to syndicating. I think there may also be objections where a number of dignities are collected in one person, and then, owing to his death without a son, there being several daughters, there is an attempt to divide them. Syndicating I think is far more objectionable because it seems to me to imply an improper method of approaching the Crown and practically entering into a bargain, and a very awkward result nearly happened in the Burgh, Strabolgi and Cobham cases where three claimants had agreed to divide three baronies between them. There some doubts were entertained by the Committee—Burgh and Cobham being found to be duly created—whether the creation of Strabolgi was properly proved.

339. Or whether he ever sat at all?—That had to be adjourned, and eventually the Committee found that the barony was duly created, but the result of there being three claimants, if it had been found there were only two baronies, would have been awkward. There seems to me to be impropriety about the whole of an arrangement of that sort.

340. It is the fact, that, whether there was a bargain made with the Prime Minister in a particular case or not, the practice

has been that when two claimants have come forward and claimed two or three peerages between them they have been divided up between the claimants?—The practice has been so recently. In that form the practice only dates from this century, I think.

341. Was not one of the first cases the Baronies of Darcy, Meinill and Fauconberg?—That was in 1903. That was the first case where admittedly two people came together and said: "There are two peerages"—or, rather, they said there were three, but there were only two—" and we wish each to have one." That is the first example of it.

342. There was another one in the case of the claim to the Barony of Latymer. Was not that a claim put forward in conjunction with the Duke of Atholl for the Earldom of Oxford?—The Duke of Atholl thought he was co-heir to the Earldom of Oxford and he did not oppose Mr. Money-Coutts' claim to the Barony of Latymer.

343. But they came forward as joint claimants?—No, because Mr. Money-Coutts did not claim the Earldom of Oxford. It is rather difficult for me to say what I believe happened in that case.

344. May I put it like this: Mr. Money-Coutts did not interfere with the Duke of Atholl's claim to the Earldom of Oxford, and the Duke of Atholl did not interfere with Mr. Money-Coutts' claim to the Barony of Latymer?—No, but I do not recollect whether Mr. Money-Coutts was a co-heir to the Oxford Earldom. Perhaps Mr. Ellis can tell your Lordship.—(*Mr. Ellis.*) Yes.—(*Witness.*) Then in that case it is a proceeding rather of the same character as the other.

345. What was the next case of a syndicated peerage?—Burgh, Strabolgi and Cobham, which is perhaps the best known.

346. That was the most modern case?—The claims of Lady Loudoun and Lady St. Davids are the most recent examples of syndication, and we had an attempt of same kind in the case of the Baronies of FitzWaryn and Martin.

347. But the case of Burgh, Strabolgi and Cobham you say is the most remarkable case?—It is the case which on the whole aroused the most public interest.

348. Has not it also given rise to another result, that in the case of the Cobham Barony an attainder was reversed only to give purity of blood to certain descendants of the attainted man?—Yes.

349. And all the others are still under a stigma?—Yes.

350. If that purity of blood in the present Lord Cobham or his relatives dies out, nobody could hold the Barony of Cobham without getting the attainder of the same man reversed a second time?—I believe that is so.

351. That is a rather curious state of affairs, is it not?—I fancy, but here again I am speaking without certain knowledge, that the reversal of any attainder, affecting a title to a peerage to which a man would be entitled, strictly takes the form of relieving that man of his disability so far as it affects his capacity to hold the title.

352. I do not suppose you can say exactly what the function of this Committee is, but I suppose this Committee could make a suggestion in hostility to syndicated claims being granted?—I think it would be possible, but I think it might be rather difficult to frame a recommendation in that sense.

353. Now I will just make an allusion to your evidence set forth in your precis. You there say: "The various decisions on cases of this description, that is cases where there is no direct succession from father to son, during the first half of the 17th Century are set out in the Complete Peerage, Volume IV, pages 704 to 705, and are inconsistent, but it was held in the Clifton case, 1674, that the heir general, i.e., the only daughter, though a woman was entitled to receive a Writ of Summons." Surely that was not the decision. I have the words of it here. The judges were summoned and they were asked to give their opinion on this case, and they said: "First, that the said Jervas, by virtue of the said writ or summons, and his sitting in Parliament accordingly, was a peer and baron of this kingdom, and his blood thereby ennobled. Secondly, that his said honour descended from him to Catharine, his sole daughter and heir, and successively, after several descents, to the petitioner as lineal heir of the said Lord Clifton. Thirdly, that therefore the petitioner is entitled to the said dignity. The House of Lords thereupon resolved that the said Catharine, Lady O'Brien, hath right to the Barony of Clifton. The King assented to this determination and recognised her as Baroness Clifton accordingly." There is nothing about a writ?—Then there is a mistake.

354. I thought it right to call your attention to it.—The resolution was that the said Lady O'Brien had a right to the dignity.

355. The judges reported to the House and the King accepted it. That is a very famous case?—Yes, very famous and is generally held to establish once for all the right of the female heir general.

356. It was really to pick up and consolidate the point that Lord Coke had made when he said that it descended to the daughters?—Yes, but it is not an authority, as I think Mr. Ellis will bear me out, on the question of abeyance. What it affirms is, to take the case in its simplest form, that where a baron by writ dies leaving one daughter she succeeds as of right. That is the effect of the Clifton decision. It is not an authority on the question of abeyance.

357. But that bears out what Coke remarked " But if an earle that hath this dignity to him and his heires dieth, having issue one daughter, the dignity shall descend to the daughter; for there is no uncertainty, but only one daughter, and the dignity shall descend unto her and her posterity, as well as any other inheritance " and he gives several examples which are utterly irrelevant to it, but that is consistent so far as it goes with the Clifton case?—Coke's dictum was about the earldoms but it was applied afterwards to baronies.

358. And was emphasised in the Clifton case?—Yes.

359. Then that led further to the view that when a man had two daughters and the descendants of one of those daughters died out, the other daughter, or if there was a single descendant, that descendant has a right?—I think there is some question as to exactly when that doctrine dated, but I should myself date it from the time when the Willoughby de Broke case came up before the House.

360. There were two daughters and it fell into abeyance and the abeyance ended by one descendant only being left?—The claim was a claim as of right on the ground that owing to the failure of all other co-heirs except one, the remaining co-heir had acquired a right, and in the course of the discussions before the House, a meeting of the House—in those days they did not always refer cases to the Committee for Privileges and the House itself sometimes did it—was held, at which all barons by writ were required to attend in order that this question might be gone into and decided. A decision was come to that on the failure of all co-heirs except one, the remaining co-heir became entitled, which is what is known as emergence.

361. When the return we have here was first moved for, the late Lord Willoughby de Broke got up and made some remarks in the House, in the course of which he said he was not sure he could agree to it because he did not think if the return was given or an inquiry made, he would be sitting there at all. I think he would be quite incorrect in that?—I think he would be incorrect. I have brought the return up to date and would ask to be allowed to hand it in.

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o. 4.

362. Because he came there as of right by the abeyance ending and not by a calling out by the King?—That is so.

The Witness is directed to withdraw.

Ordered:—

That the Committee be adjourned to Wednesday next, 11 o'clock.

Die Mercurii, 4° Augusti, 1926.

LORDS PRESENT:

MARQUESS OF BATH.	LORD REDESDALE.
LORD KINTORE (Earl of Kintore).	LORD SUMNER.
LORD HYLTON.	LORD MUIR MACKENZIE.
	LORD ASKWITH.

THE LORD SUMNER IN THE CHAIR.

Mr. G. PROBY is again called in and further examined as follows:—

363. (Lord *Askwith.*) I understand you have the opinion of the Attorney-General of the day in the Camoys case, which you would like to put in?—This case occurred in 1838, and it was one of the group of cases we were speaking about, early in the reign of Queen Victoria, when the Botetourt precedent was followed, and I think in that case it seemed even less appropriate, that is to say, the proportion the co-heirs possessed of the original inheritance was smaller and the length of the period during which the barony had been in abeyance was longer. The interest of this extract which I am going to read is, I think, largely due to the fact that it was in the speech by the Attorney-General, speaking more or less on behalf of the Crown. I ask to put it in, not as necessarily indicating the kind of line which might be followed now, but merely to call attention to the previous history of the question as it affects this House and proceedings which have been taken in the House.

364. Will you read the extract?—This is what the Attorney-General said in the course of his speech, which is taken from the shorthand note and has not been printed: "As the law now stands it is clear there is no limitation whatever as to time. Whether your Lordships may think it requisite hereafter that the law should receive some amendment upon that subject is quite another consideration, but as the law now stands it is quite clear there is no limitation whatever." Then later on in the course of his speech on the same case the Attorney-General said: "My Lords, I must point out the inconvenience that must necessarily follow if your Lordships are to hold that any person who can trace his pedigree by ingenious assistance to a person who has once been summoned to this House under any title has in him a barony in fee. There is great difficulty in saying where the limit is to be drawn as to the number that may make a similar claim";

and later in the course of the same speech he said : " But . . . that may be a reason for your Lordships in your Legislative capacity providing a remedy, and I might very humbly and respectfully suggest that it would be highly conducive to the honour of the peerage and the public weal if some definite time were laid down beyond which no claim could be made. I do not see that if a century were fixed, injury could be done to any person whatsoever, for, my Lord, to suppose that any person received a wrong who is deprived of the information that he never dreamt of that he is entitled to a barony in fee, I think, my Lords, would be idle to suppose."

365. (*Chairman.*) What is the date of that?—The Camoys case was in 1838, and it is one of the group of cases which was referred to at the last meeting of the Committee.

366. (Lord *Askwith.*) That Peerage was called out of abeyance in 1839?—It was.

367. This was an opinion given in 1838?—It was when the case was being argued before the Committee for Privileges that the Attorney-General made use of these expressions.

368. Who was the Attorney-General then?—I do not remember at the moment, but I can ascertain that.

369. You said that came from some shorthand notes. What is the custody of the original document?—The shorthand notes are kept here. In old times the practice was only to print the evidence and not as a rule to print the arguments. We have the notes of the arguments here.

370. In shorthand?—In shorthand, and I have had some of them typed.

371. (*Chairman.*) Could a stenographer of the present day read the shorthand notes taken in 1838?—I do not know that he would be able to, but it was done then by the Shorthand Writer of the House in the same way as it is done at present.

372. Was it put into longhand at the time?—Yes, and I think has equal weight with any other manuscript authority of that sort that we have. It is kept in the Victoria Tower.

373. (Lord *Askwith.*) That was a sort of indication that the Crown in 1838 was then taking interest in the question of these peerages being brought out of abeyance?—I think it was so, and I think perhaps it is not fanciful to attribute the interest which the Crown felt in it to the fact that the Redesdale Reports were then fairly recent. The whole thing had been very much ventilated in the Reports on the Dignity of a Peer, and the Attorney-General, at any rate, seems to have thought that some action might be taken.

374. Interest in the state of the peerage had been taken at a still earlier date judging from what you said in your earlier

evidence, because you alluded to the question of it being brought up in 1718, when there was an inquiry and a resolution, and even a Bill, in the House of Lords after the Union between Scotland and England? I am not very conversant with the details of that, but the origin was that it was felt that the system of electing representative peers was not satisfactory and that it would be better to make a different arrangement. I think the proposal eventually was to provide for a certain number of peers by a different arrangement. The reason I ventured to call the attention of the Committee to that opinion of the Attorney-General was that it did involve a curtailment of the powers of the Crown with regard to peerages, and the means by which it was proposed to effect that curtailment was legislation.

375. That was why I was asking you the question. So far as the message from the Crown went in 1718 it was a proposal that the King's Prerogative should not stand in the way of what the House of Lords might recommend?—Yes.

376. The entry is: "On 2nd March, 1718, when the Order of the Day for the House to be in a Committee to take into consideration the present state of the Peerage of Great Britain is taken, a message from the King is delivered to the following effect, 'that His Majesty being informed that the House of Peers have under consideration the state of the Peerage of Great Britain, is graciously pleased to acquaint this House that he has so much at heart the settling of the Peerage of the whole kingdom upon such a foundation as may secure the freedom and constitution of Parliament in all future ages, that he is willing that his prerogative shall not stand in the way of so great and necessary a work.'" Is that correct?—That is so.

377. The message was referred to the Committee of the whole House and a resolution was taken and a Bill introduced, which appears to have passed the Lords and was lost in the House of Commons?—That is so.

378. Then the question of abeyance came up, as you mentioned, in the Botetourt case?—Yes.

379. Did Mr. Charles Yorke, the Attorney-General of the day in 1763 give a long report upon it?—He gave a long report which is now before the Committee.

380. Where does that report come from?—That comes from the Record Office. The position as regards those papers of an early date is that those papers bearing on the calling of peerages out of abeyance and other matters to do with peerages were in the Home Office, and the papers before a certain date were transferred to the Public Record Office for custody. When this question was being discussed on Lord Askwith's motion three years ago I went to the Record Office to see if they had any papers which seemed to bear on the subject, and this paper was among them, together with several other reports of the Attorney-General

on matters of the same kind. Therefore this paper is undoubtedly in the proper custody, and if it were desired to prove it, I imagine somebody from the Record Office would have to attend to do so.

381. I do not think that before a Committee of this kind we want actual formal proof in the same kind of way as in a Court of Law. You now produce it as a document which originally was in the custody of the House of Lords?—No, it was originally with the Home Office.

382. It is a Government document?—A Government document.

383. And is now harboured in the Record Office?—Yes, and I made a transcript of it myself.

384. It is dated October 31st, 1763?—Yes.

385. And this document which you have put in is a correct transcript of it?—It is a correct transcript.

386. I do not know that it is necessary to read it out, but I think it would be useful to have it upon the Notes?—Yes.

The extract from the Attorney-General's report on the Botetourt Peerage case is handed in and is as follows :—

> "And I am humbly of opinion that although it might be lawful for Your Majesty to revive this Barony now in abeyance yet the matter ought to be fully weighed and examined in the House of Peers by reference from Your Majesty, before any Declaration made or Act done: as it concerns the exercise of a Prerogative of the greatest moment to the Crown and the Constitution of the Peerage and as it may tend to the Revival of many other ancient claims. There have been some instances of this sort in former times, where the Barony had long been dormant. The Barony of Despenser was revived, allowed and confirmed to Lady Mary Fane, upon a contest before the Lords, after it had been dormant two hundred years, in the second year of James the First. The Barony of Willoughby de Broke was claimed by a sole heir and allowed by Judgment of that House upon a reference from the Crown in 1695 after it had been dormant amongst . . . co-heirs from the year 1522. The Barony of Berners was allowed in like manner in 1720, tho' no person had been summoned, or sat in Parliament by that title from the year 1539. In the present case the last sitting actually proved is still more remote, being so long since as the 50th year of the reign of King Edward the Third—now almost four hundred years ago. And I do not find any instance in which a Barony in abeyance has ever yet, in fact, been revived after so long a cesser of enjoyment, where the last sitting is more ancient than the original creation of Baronies by Letters Patent (which is dated in the 11th year of King Richard the Second) and almost as old as the opinion in law, that a Barony in fee was conveyed by a Writ of Summons,

on which the party summoned had sat in Parliament (which opinion is said by learned writers to have taken its rise in the reign of Edward the Second) and where the very same title has in the meantime, whilst it continued in abeyance, been once granted by Letters Patent from the Crown, importing a new creation; as in the case of Lord FitzHardinge in the 16th year of King Charles the Second, who being a younger brother of the Petitioner's family and descended in blood from the ancient Lords Botetourt was created a Baron by that name and title.

Upon these considerations, I submit my humble opinion to your Majesty, that before any Act shall be done, pursuant to the Prayer of the Petition it is fitting (if such shall be your Royal Pleasure) to refer the whole matter of it to the House of Peers, according to the usage of Your Majesty's Predecessors in such cases.

All which is humbly submitted
C. YORKE,
Oct. 31, 1763."

387. (*Chairman.*) Will you tell us what you have to say about this return we now have before us, headed "Return of Baronies, creation of which can be established by Writ and Sitting"?— This return was prepared rather hastily, I am afraid, as the result of a request which was made by the Committee at the last meeting when you said that you would like to have an idea of what the number of possible claims to these Baronies would be. If your Lordships will look at the return, you will find that there are four columns. The first two give the name of the Barony and the date of creation. Of course, the return does not claim to be an absolute or final statement, but those particulars, I think, may be relied on as being substantially accurate. The same applies to the third column, which gives the date of abeyance or extinction. Very often you got, say, in the 14th or 15th century, two or three persons in a family summoned and sitting in Parliament and then after that nothing more happens, and it may be exceedingly difficult to trace what the subsequent history of the family is, or whether there are any descendants living. The thing cannot be stated with any certainty in many cases. There are, however, a number of these cases which have been before your Lordships—the cases of Grandison, and Fitzwaryn and Martin, to name two—where your Lordships investigated the pedigree and decided that co-heirs were living. In those cases, therefore, the co-heirs whom I have put down have at any rate run the gauntlet of the investigations which the Committee for Privileges make in cases of this sort. In a great many other cases you will see it is said that the peerages are probably extinct. As was remarked at the last meeting of the Committee, these genealogical investigations have been pursued with a great deal of industry, because a certain amount of profit may be derived from them by the people who make them, but, except in those

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cases which have been decided by the Committee for Privileges or which have been before that Committee and the hearing has not been concluded, I have taken the co-heirs from an appendix to Dod's Peerage. Of course one cannot claim that any certainty attaches in those cases to the names which are given, but on the whole it does represent the result of fairly prolonged and industrious search into possible descendants. If I may take an illustration, your Lordships will find in this return there are the peerages of Ferrers, Bourchier and Compton: those peerages have actually been claimed, and I think in 1915 the hearing was begun but the matter was adjourned because further evidence was required. It is quite possible that that further evidence would have been forthcoming, but the claimants, I think mainly on the grounds of expense, did not pursue the matter any further. Therefore, technically, those cases are still pending. I think what applies to them probably applies to a great many of these other cases, namely, that what we have here is a list of probable co-heirs, but there may be some gaps in the evidence and I should hesitate to say that in all these cases the statement of Dod that certain people are co-heirs is absolutely true. At the same time I thought it would be interesting, for the purposes of illustration, to put in the people whom he names, so as to give your Lordships an idea of the general position.

388. (Lord *Askwith.*) Are some of these peerages which are already held by existing persons?—No, because this is supposed to be a list of baronies which might possibly be claimed. Of course, those peerages which are actually in enjoyment cannot be the subject of a claim.

389. Are there not certain Peers at the present day who have a large number of peerages in their own holding, and, if they died and left co-heirs only, might not their peerages be distributed, on the assumption that syndicated claims were made, as they have been made in the past?—That is so, but I have not included in this return any peerage which is in actual enjoyment, because I take it one could not dispute the existence of any peerage which is in enjoyment now, and one could not dispute the heirship.

390. But you have not included a case like the Countess of Loudoun and the Viscountess St. Davids, where six or seven peerages were held by one person.—No, except that several of the peerages to which Lady Loudoun and Lady St. Davids are co-heirs appear in this return, because three years ago they claimed another group of baronies and the claim was not proceeded with.

391. If those ladies claimed these peerages and got them, both Lady St. Davids and Lady Loudoun would each have several peerages?—Yes.

392. And they might leave co-heirs only?—They might.

393. And again those peerages might be distributed?—That is so.

394. You might add a dozen more Peers to the Roll out of the issue of those two ladies.—That is so; but in making this return I have only dealt with peerages which are not at present possessed by anybody and which might be the subject of a claim. I will supplement the return by making a list of Peers and Peeresses in their own right who hold peerages of this description, in some cases as subordinate titles. Document

395. (*Chairman.*) I rather think that would be useful, because we had better know the whole field of possibilities.—Perhaps I might say, in further explanation of the list now before your Lordships, that, as your Lordships are aware, in proving the creation of one of these baronies the law requires that, in addition to proving that the person was summoned, one has to prove that he sat. That rule has, I think, historically little foundation, but it has been very valuable, because it limits the number of claims immediately. Document

396. Then, supposing the records of Parliament have perished, a number of baronies could never be proved?—There is another reason, because in the old Rolls of Parliament you do not get a complete list of persons present, like you do in the modern Journal, but only a list of people appointed to do certain things. Consequently the Rolls of Parliament do not really give you a list of all those present. The reason I mention that is because on this return which is before your Lordships there are about sixty-five names, and I have another return which I have not yet had duplicated, which gives the other baronies, so far as one can ascertain, which might be held to have been created if the rule about sitting did not apply, and those amount to 185. I do not know whether it would be of interest to your Lordships to have that return as well. Document

397. I think it would be just as well if we had it. We had better make our materials as complete as your records enable you to make them?—I think if that return and the one to which Lord Askwith referred, together with this present one, were before your Lordships, you would have all the information which I am able to supply.

398. I see there is a slight difference of form in this return. In a number of cases the statement in the "General Remarks" column is "Co-heirs are," but in the great majority of cases it is simply "Co-heirs"?—I am afraid that is due to the fact that the return was prepared rather hastily.

399. It is not intended to make any distinction?—No, it is not intended to mark a difference.

400. I thought possibly "Co-heirs" implied a greater degree of certainty that they are alive, or something of that kind?—No; it is only due to the fact that the return was prepared hastily.

401. You said that it was the case that an increasing number of people were taking an interest in these genealogical researches with reference to claims to peerages in abeyance. Are the materials increasing or improving with improved preservation of records or improved calendaring of records?—I do not know that that is a matter I can speak on with any great knowledge.

402. Ordinarily one would have supposed that in the one hundred years or so which have passed since what are called the great Baptist Hatton days there would have been a loss of many family documents. On the other hand, there has been for the last forty or fifty years such a collection of documents into public custody that it is quite possible documents have been preserved which otherwise would have disappeared?—I think that is so.

403. The state of the materials may have improved on the whole, but I take it you do not know as to that?—I cannot say anything for certain on that. There is an enormous amount of material, I believe, in the Public Record Office, which has not yet been gone through, and those who make it their business to get up these questions no doubt are always breaking fresh ground.

404. You speak about those who make it their business. Are you distinguishing between those who make it their business and those who make it their pleasure? Is there a class of persons who do it in the hope of finding a customer?—It is a little difficult to assert anything positively about that. My impression is that there are certain people who perhaps are otherwise engaged on genealogical research but who always bear in mind when they are doing it the possibility of discovering facts which might cause somebody to take up a claim.

405. (Lord *Askwith.*) Is it not a fact that the investigation of and access to the records has considerably improved during the last twenty years?—I should say enormously.

406. Is it not much more easy for a claimant to advance a claim owing to the custom of the Committee for Privileges of the present day taking partial hearings in proof of pedigrees in former cases as sufficient evidence, without going into it all again and proving the custody?—I suppose it is. Of course, certain things are accepted without question by the Committee for Privileges. For instance, if a Close Roll is printed in the Report of the Redesdale Committee, that would mean that for the party who was putting it forward it would be enough to call the attention of the Committee to the fact that it was there. That Report having been accepted by the House, any document contained therein would be accepted, subject to any textual questions which might arise.

407. Has it not been the rule of the Committee lately to take *en bloc* long pedigrees proved in such big cases as the Lord Great Chamberlain's case, the Norfolk case, or even the Grandison case?—I think the practice of the Committee for Privileges in that case is that the petitioner has to ask for leave

to refer to the former proof. As a rule the practice is to grant the leave asked for, subject to any just exception, and that, I take it, clearly means that it is open for the Crown, or for anyone who wishes to criticise anything to reopen any question which appears to be doubtful. I think the practical result may be that perhaps not sufficient attention has always been given to it.

408. And the custody of the documents would not be gone into, or where they came from?—The custody of most of these early peerage documents is, I think, in the Record Office. The Close Rolls, which are the evidence in early times that a person was summoned, are, I think, in the Record Office, and the Rolls of Parliament as well.

409. I have here Palmer's book, which was published in 1907, and it gives on pages 176 and 177 a list of the most ancient peerages, and at that date he enumerates the baronies from 1264 to 1554, and they number seventeen. I obtained this morning the Roll of Peers of the present day, and I see that, if you take the same names and include the women, from 1264 to 1553 twenty-six Peers appear as being Peers. So in the last nineteen years nine peerages have suddenly been called out. The peerages that have been called out are put like this: Fitzwalter, Clinton, Cobham——. Speaking from memory, I think Clinton was a case of emergence and not of actual termination.

410. Clinton is in the old list. The names are: Fitzwalter, Cobham, Strabolgi, Cromwell, Latymer, Dudley, Burgh and Wharton?—Yes.

411. Then it would be true what Dr. Round wrote in the "Quarterly Review" of July, 1915, at pages 53 and 54: "By the doctrine of abeyance which was only developed in the 17th century baronies which were last heard of five or even six centuries ago, and the very existence of which would probably be denied by historians, can now be claimed by the heirs in blood of those alleged to have held them"?—That is undoubtedly true.

412. (*Chairman.*) Just to pursue this point about the professional genealogists, one of the things to which we shall have to direct our attention is the extent to which there is any case for general dissatisfaction calling for any interference at all. After all, if these cases only occur at long intervals and always under a certain amount of fire of criticism they might not become sufficiently numerous to make it desirable to take any fresh steps. On the other hand, if there was any ground for thinking that the thing was becoming a trade already and still more might be the subject of an expanding trade, it would be a very different question. I cannot help noticing how many of these people named in your fourth column are ladies, and, of course, if peeresses were enabled by Statute to sit in the House of Lords, there would at once be an attraction about these peerages that are in abeyance which might make a very considerable difference

to the willingness of possible claimants to incur the expense and the trouble of proving their descent. I am not asking for any names or any information that would be of a personal character, but is there reason to think that there is a systematic collection of genealogical material on the part of persons who look forward to some opportunity at some time or other of suggesting to a possible claimant : " Now the missing link has been found, or one of them has been found, and a little more money will produce some more," so as to turn it into a trade in which the searcher makes the approaches instead of the aspirant seeking the fruit for himself?—That is a question I have great difficulty in answering. I can only give a sort of impression of what I imagine happens. There are a number of people, for example, the Heralds' College, whose duty, and I think without disrespect, one may say, whose trade it is to conduct genealogical researches over a very wide field. People come to them and say : " I want my pedigree proved ; I want to be connected ancestrally with somebody, and I want a few missing links supplied." When that kind of work is being done on a very large scale, a great many other facts turn up besides the actual fact which is being sought after. I have no moral doubt but that when any facts bearing on these baronies turn up they are docketed, and so on, with other facts, and the Heralds' College, and probably other people are in possession very likely of a better list than I have been able to furnish to your Lordships of possible peers. I do not regard it as a matter of blame or a matter of scandal, and I am only saying what I believe to be the fact, not anything I can prove ; but it does seem only natural that in those circumstances there should be an inclination to draw the attention of a co-heir to the fact that he could probably make out his claim.

413. It is, of course, one thing that the Heralds' College should make the most elaborate researches into genealogies and cross index them, and post them to all lines in which they may ultimately fill a link, and that is, I suppose, to a large extent the purpose for which they exist?—It is.

414. But I was thinking rather of the existence of persons who make it their business to carry on this research in order that when they find what they think is a good thing they may promote claims that would otherwise never have been made?

(Lord *Redesdale*.) There are professional researchers at the Public Record Office on every sort of branch for anything that you want to find out. You can find out the individual who makes a habit of some particular form of research.

415. (*Chairman*.) That is a different class of person from what I was thinking of. Those are people who read in the Record Office or in the British Museum and who know their way about the documents and are ready to search, and, if you want something looked for, one of those persons takes a fee, I suppose, to

investigate the files of documents that may contain it. I was wondering whether there was the converse case of a speculative researcher who hunted up missing links for the purpose of promoting a claim, with subsequent employment, of course, that would otherwise not have occurred to the party suggested as interested?—I cannot say that I have any actual knowledge. I believe there are certain firms who go through whole masses of documents and make alphabetical indexes say of any family that comes along.

416. That may be only for the purpose of answering enquiries made to them?—Yes; but then they are willing to sell their information. It came up in connection with some work I was doing about my own family: I wanted to find various references and I was told if I paid £5, or whatever it was, I would be supplied with a list of all those references.

417. I suppose that is as far as you can carry it?—Yes.

418. It does not appear to have attained a notorious standard at any rate, and it may be only on a very small scale if it exists at all.

(Lord *Redesdale.*) Would it affect the merits even if it did exist. Supposing A was entitled to a peerage and was wholly unaware of the fact, and B, a researcher, discovered A's right to this peerage, if A in fact had the right, does it matter how he became aware of that right?

419. (*Chairman.*) From the point of view of the particular committee for privileges which entertained the claim I should have thought it did not, because all they have to ascertain is whether the claim is made out. But for our purposes, if it appeared that there were a considerable number of potential abeyances that might be terminated and that the persons interested in them knew nothing whatever about them while there were other persons who, for profit to be made out of the legal business, went about putting up a claim, that might be a thing for us to take into consideration in making recommendations about these outlying speculative abeyances. That is why I thought we had better utilise Mr. Proby while we had him, but I understand he cannot carry it further?—No, I could not carry it further I think.

(Lord *Hylton.*) I have rather been in the habit of investigating genealogical matters for a good many years and I have employed at one time or another some of these searchers to whom Mr. Proby alludes, but I really cannot believe that there are people who make a living by hunting up peerage cases. They would long since have perished from starvation I think.

(*Chairman.*) I did not say they made a living by it.

420. (Lord *Askwith.*) We had a lady witness before the Committee for Privileges on one occasion who made searches—Yes, Miss Stokes.

421. (*Chairman.*) She is evidently a skilled person. She knows where to put her hands on documents and where to look for things. Is there anything else you wish to submit to the Committee?—I do not think so.

422. (Lord *Askwith.*) Can you say whether in regard to the resolutions of the Committee for Privileges or of the House in the past, any further information has been given to the Crown than appears upon the reports of the Committee for Privileges of the present day?—Not to my knowledge.

423. (Marquess of *Bath.*) In this list you have put in you have not included the baronies that have been claimed within the last year or two and where the claims were turned down. For instance, there is the case of Beauchamp?—The Beauchamp case I included in my other return of baronies, in respect of which there has been no sitting, and which I am going to circulate. Beauchamp failed because there was no proof of sitting.

424. (Lord *Hylton.*) This list you have given being all sittings?—Yes, all sittings proved in the strict manner, that is by the name appearing on the Parliament Roll.

425. (Lord *Askwith.*) Writs and sittings?—Writs and sittings.

The Witness is directed to withdraw.

Mr. Robert Geoffrey Ellis *is again called in and is further examined as follows :—*

426. (*Chairman.*) You have been present each time and you have followed the scope of the enquiry so far. I understand that there is some assistance you can give us as to the conclusions that might be drawn from what we have heard already?—Examining the historical periods with a view to considering any line that might be drawn, the periods do seem to fall into very definite sections. There is a first period which dates practically from 1295, the model Parliament from which the first ennobling writ is now regarded as able to be dated, and finishing at the end of the reign of Richard II in 1399. During that period practically the whole of these writs and sittings in response thereto, concerning which your Lordships have been asking questions, might be the subject of claims according to the views which your Lordships' Committee for Privileges might take about the class of evidence submitted to satisfy them that an actual sitting had taken place. But the main point is that until the beginning of the reign of Edward III many writs of summons to Parliament were issued to individuals once only. In many more instances only two or three writs were issued to the same individual, and again frequently heirs whose predecessors in title had writs received none themselves. It was a period which certainly disclosed no regular process of issuing writs on any

hereditary principle either expected or actually carried out. History records that although many men may have expected a writ of summons to Parliament or thought they were for various reasons entitled to one there was no obligation on the Crown to summon them, and that summons was within the discretion of the Crown. Later the idea of a barony as a personal dignity began to emerge as opposed to a quality of tenure alone. Then comes a second period, from the accession of Henry IV to about 1450, a period of settled law in which one can observe the growth of certain definite principles crystallising into peerage law and custom. During this period few of the writs of summons issued have since been the subject of peerage claims. There followed the Wars of the Roses, during which whatever lip service may have been paid to law the only rule was the absolute will of the faction in power for the time being. That period ended with the death of Richard III in 1485.

427. (Lord *Askwith.*) Is it not likely that the peers of the day objected to the monarch, just as they did in Charles I's time, arrogating to himself that right?—I think there is no question of that, but the difficulty comes in there that you had the two factions each of which made use of what they said was the law for their own particular faction purposes and consequently there is no rule of settled law from which you can deduce anything during the period. Whenever anything arbitrary was done, a general principle of law was always invoked but it was scarcely ever justified.

428. But during that period a peerage was being more and more considered to be a dignity that was worth having?—I think the dignity had become personal before the Wars of the Roses started. It certainly was no longer mainly a question of tenure then. Then came the reign of Henry VII putting an end to the Wars of the Roses, and I think all historians agree from that period, the Tudor period, the whole matter started on an entirely new footing—a commercial period and practically a new baronage altogether. I am not quite certain but I think certainly not more than 30 peers were entitled legally to sit in the House of Lords when Henry VII became King, for various reasons other than minority—attainders, extinctions, and outlawries. From that period a new nobility started and practically a new Civil Service. Straight on from that date there is a definite rule of settled law. Therefore, the thing that does cross one's mind is at what date one should say that a barony created by writ of summons and sitting might constructively be regarded as having been granted during a period when it was never intended that the writ should be considered as conferring an hereditary peerage. If you put it arbitrarily at the end of the Wars of the Roses, curiously enough you are taking a line you would be justified in taking in the case of earldoms in fee. After 1485 there were no more earldoms in fee created with one exception and that was in reality a revival. All what are termed the ancient

earldoms come before that date, since those that have been created later have all been created by patent with a limitation invariably to heirs male of the body of the grantee. So it does appear that at the end of the Wars of the Roses one is justified in saying that the law becomes crystallised and was not altered after that period. That might be, if your Lordships thought so, a convenient period to draw a line with respect to the advisability of terminating abeyances.

What period?—At the end of the Wars of the Roses; 1485.

429. It had become firmly crystallised and known by the time of Lord Coke?—Lord Coke was a little later.

430. But I mean by that time, the beginning of the 17th century, it was quite crystallised?—At the beginning of the 17th century there is no doubt that the lawyers definitely made up their minds to accept certain definite rules.

431. Lord Coke in his First Institutes says this: "A man may have an inheritance in title of nobilitie and dignitie three manner of wayes, by creation, by descent, and by prescription . . . Creation by writ is the ancienter way . . . And this Writ hath no operation or effect until he sit in parliament, and thereby his blood is ennobled to him and his heires lineall; and thereupon a baron is called a peer of parliament"?—Yes, that is a statement of the conclusion they had come to.

432. And it has been adopted ever since?—That has been adopted ever since.

433. With variations of abeyance and whom it can go to, and whether abeyance ends when there is a single heir and points like that?—Yes, but without any variation of the principle your Lordship has just enunciated.

434. Do you agree with what was said by Lord Davey in the Norfolk case, speaking about surrendering, when he gave a general opinion about the peerage law and said: "There is no doubt that a man cannot alien a title of honour either by surrender to the Crown or by grant to a subject. This is now settled law, and the reason is this that it is a personal dignity which descends to his posterity and is fixed in the blood; in other words, he cannot by his own act alter or affect the status of his descendants or the other persons in the succession. But it is suggested rather than argued that, although this is now recognised to be the law, it was not accepted or treated as law in the reign of Edward II, and that the grant of 1312 ought to be treated as valid, and effect given to it in accordance with the ideas of the fourteenth century, not according to those which now prevail. This contention appears to me to be based on a fallacy, and to involve a misapprehension of the nature of the jurisdiction exercised by your Lordships in peerage cases. Whenever a Court or this House, acting judicially, declares the law, it is presumed to lay down

what the law is and was, although it may have been misunderstood in former days, and this House is bound by its own declarations of the law in all matters within its jurisdiction; in fact, this House, exercising its judicial functions, has no jurisdiction or power to alter the law when once ascertained in a binding way . . . . For these reasons I concur in the resolution proposed by the noble and learned earl." Do you agree with that?—I agree that it establishes a convention of law, but in so far as history is concerned it is totally incorrect.

435. Perhaps so, but does not it lay down certainly a dictum and a very strong dictum and it would be utterly impossible at the present day to alter it and say there shall be no abeyance of peerages?—I agree your Lordships with respect have established a rule of law which, with respect again, is a convention and contrary to history, but that we cannot help.

436. (*Chairman.*) What was the date of Lord Davey's dictum?—The Norfolk case was decided in 1907. I remember the case: I held a small brief in it. It very much astonished us, but there it is; and it is regarded as the law at the present day.

437. They applied the law of 1907 to 1312 to a gentleman named Bygod who surrendered his earldom to the King?—It does not apply only to 1312 but presumably to later cases, because we have a case in hand now, the Barony of Montagu, in which there is involved a surrender of the Earldom of Northumberland in the year 1460, which under that rule of law the Attorney-General must advise is invalid. If I may put it in this way, we are only concerned in cases before your Lordships with what the law is as declared. It may be totally contrary to historical fact, but that we cannot help; if your Lordships have laid down a rule of law we are bound by it.

438. (Lord *Askwith.*) And the King can deal with it by a re-grant?—It was not regranted in the Northumberland case in theory, but in fact it was regranted to a Percy, and that would be held as the result of the rule to be a new peerage but with the same name.

439. (*Chairman.*) It is a privilege of the Committee for Privileges to rise superior to history?—The Courts also.

440. (Lord *Askwith.*) In the 14th Century I think there was a surrender of the Dukedom of Bedford by one called Hugh the Pauper, or was it the Earldom of Bedford?—The Dukedom of Bedford was a degradation, a definite one, by Act of Parliament in 1477.

441. But there was a surrender of the Earldom of Bedford?—Yes; Hugh the Pauper in 1142.

442. If the descendants of that person who surrendered the Earldom, which he did on the ground of his poverty, appeared, they could be Earls of Bedford?—So far as the hypothesis is concerned, and if Earldoms be held capable of becoming abeyant, yes. The descendants became French subjects.

443. (*Chairman.*) I have made this note, that, if the Committee for Privileges were to alter its views of proof and got more lenient, old abeyances not hitherto heard of might be worth putting forward, and successfully. That is a point you made a few moments ago?—Yes.

444. Shall I add also that, if the Committee for Privileges were to alter its views on history, there might be peerages supposed to be extinct which would revive and be worth pursuing?—Yes, you might have other peerages, if your Lordships altered your views of history, of tenancy by the courtesy of England, which might create some difficulty—peerage held by a man in right of his wife for the term of his wife's life which would disappear if his wife had not any heir surviving by him. That has never yet been decided.

445. You have dealt with the difficulty of drawing a line between the views of the feudal system in its later days and the views of the Crown lawyers after the new nobility had come into being. Now will you pass to another point, if you have another to suggest to us?—Might I just take that question of the difficulty of proof first, because it is a question which has been causing a good deal of concern in the Attorney-General's Department. In recent cases before your Lordships an attempt has been made to prove physical presence in Parliament not by record, that is to say, not by a record of Parliament, but royal charters have been produced which have nothing to do with an actual Parliamentary proceeding, but which contain the names of witnesses, appearing to show that those particular witnesses were present in the neighbourhood of a place where Parliament was being held on a certain day. That was done in the Beauchamp case, and in other cases. Very strong attempts were made to show that presence ought to be accepted as legal evidence to prove that it was not possible, presuming the individual to have been there, that he would not have been in Parliament if you could also show that a writ had been sent to him.

446. (Lord *Askwith.*) An inference by deduction?—An inference by deduction.

447. If it was proved that the man was looking at the tombs in Westminster Abbey it must be deduced that, if Parliament was sitting, he was present in the House of Lords?—Yes.

448. (*Chairman.*) I suppose the argument is: If he lived in Devonshire what was he doing in Westminster if it was not in connection with a sitting of Parliament?—That is so, and that in other respects might be good legal proof of presence. The whole tendency of your Lordships' Committee for Privileges hitherto has been to accept ordinary legal proofs just as such would be accepted in the ordinary Courts of Law.

449. It seems to me presence and sitting in Parliament does not seem to be proved by presence and doing something not far

off but not in Parliament. However, I understand this was tendered but was rejected?—Yes, but from observations which some of your Lordships made in previous cases it does appear not yet to be settled definitely one way or the other.

450. Some encouragement has been given to an attempt that was made in the Beauchamp case?—Yes.

451. Therefore it cannot be said yet to have been entirely laid?—The point is that it might be said that your Lordships thought that the particular nature of the proof offered at the time might have been sufficient if the other evidence was strong enough, but that your decision in the Beauchamp case was given because the evidence generally was not strong enough.

452. Your suggestion is that a sitting in Parliament ought to be proved only by a record of Parliament?—That is what has been held hitherto, and, if altered, the door would become open then to a new kind of proof which might let in some twenty or thirty new claims.

453. (Lord *Askwith*.) Is it not a fact that the Barons' letter to the Pope might have been taken as a proceeding in Parliament unless it had been discovered by Dr. Round that couriers went out on horseback and were paid for out of the petty bag or something of that kind, for obtaining the signatures of Peers not present?—It was proved in the end by the actual record of payments made for thread and wax and for taking materials for sealing throughout the country and payment for a horse which carried a messenger from place to place to find the Barons who were to seal.

454. The Parliament met at Lincoln and the signatures, or rather the seals, of Peers who were present on the Welsh Marches were obtained by that means?—Yes, that was the evidence. The record is in the wardrobe accounts. Dr. Round examined the details with great care.

455. In modern days a man might come up from Devonshire and might be marked down as having attended his club, but that would not be proof of sitting in the House of Lords.—No.

456. (*Chairman*.) The moral seems to be that the older the claim the more rigorous the proof ought to be, but there seems to have been a tendency, according to you, to accept what is not full proof on the ground that it is so old it must be very difficult to get it.—Yes, that is rather the view taken in the Attorney-General's Department—that the proof has not been so rigid.

457. You say it does not matter how difficult it is to get it; the more difficult it is to get, the more important it is that it should be procured.—That is so.

458. And, if it is not forthcoming, nothing else should be accepted in lieu of it.—It gives so high a position by reason of

precedence, and it is such an act of grace on the part of the Crown, that it ought not to be granted until every possible means has been taken to show there can be no mistake.

459. That is an important matter, but whether it is strictly within our scope, I have not really considered. I think there was another matter about which you have a note?—The other matter I was going to mention is in respect of these baronies which Mr. Proby has taken out. I have been through the numbers and I see 53 out of 67 all date before 1400, and 7 out of the 14 remaining are between 1400 and 1483. That would leave practically only four after my date of 1483.

460. You probably know a good deal about what claims are pending, that is to say, where a petition has been lodged and perhaps some further steps have been taken but the matter is strictly pending though making no progress. If we made recommendations we should have to consider to what extent the interest of persons who had begun their proceedings and had not, for some reason, carried them far might be affected by them, and to what extent it may be necessary to make some exception in order to protect them?—It would seem only just, if any proceedings have really been begun and a considerable amount of expense undergone in the belief that they would be entitled to go on under existing rules, that they should be allowed to continue if there has been an honest start.

461. I suppose the presentation of a petition is evidence of an honest start?—If I might I would go on a little farther and say that your Lordships should take it as far as the Report of the Attorney-General and the hearing we have before the Attorney-General.

462. If they had carried it as far as that they would have carried it up to a point which would show not only good faith but some serious endeavour to get their materials together and to say what the case was?—Undoubtedly the major part of all the money that would be expended would have been incurred by then.

463. That would be very material to any recommendation the gist of which was that abeyances originating before a certain date should not be taken into consideration at all. It would not necessarily affect considerations like those that refer to the existence and preferability of other co-heirs?—No, that is on a different basis.

464. Co-heirs who simply have not chosen to enter into competition?—That is so. There still remains the principle that, when you have got a condition of co-heirship, in theory the Crown ought to know every single co-heir, just as much as the person who is claiming, in order to be able to exercise a choice. Within the last 20 years, undoubtedly, cases have been presented

to your Lordships' House in which your Lordships have not exacted so strict a line of proof as to other co-heirs as you have of the particular co-heir claiming.

465. What is the practice now? You say to the co-heir who claims: "Do you know of any other co-heirs who might claim?" and he says honestly, "No." Then is the practice to go on and say: "But what amount of trouble have you taken to find out whether there may not be such persons?" or do you accept it that he knows of none and the Crown knows of none, and *de non apparentibus, et de non existentibus, eadem est ratio* What is the practice?—The practice now is, when he comes with his papers, having looked through them we know to a certain extent what co-heirs there would be to these baronies. If he presents us with papers dealing only with himself and perhaps one other set of lines, or three lines in the heirship, it is said: "This is not quite good enough; it will be put in the report that you have not attempted to find out these other co-heirs."

466. Supposing the claimant gets as far as the Committee for Privileges, and the claimant says: "It is quite true there are other co-heirs, as to which I do not know and have not been able to find out anything," do you in practice require him to carry his investigations to the limit of exhaustion?—Not the limit of exhaustion, but the Crown would ask for somebody to be put in the box and then questions would be directed to that particular person with a view to finding out what steps had been taken. If they simply said "We do not know" the Attorney-General would ask your Lordships to say that was not sufficient.

467. You have to cross-examine with the object of showing that there were reasonably accessible sources of information that had not been touched?—Yes.

468. If the Attorney-General was only able to say "I do not know where to find it, but it is your business to find out and you have not found it," that would not be sufficient, according to the present practice, to raise an insuperable objection?—Not insuperable, but we should put the usual questions, taking a given period and putting the facts to him, and say: "You know at such a period there are such and such documents in existence, and there are registers and wills, and this family lived in this particular district. Have you examined the family history, and so on, right away through?" If it appeared, after that, he really had not taken any trouble at all, the Attorney-General would ask your Lordships to say that he must do it.

469. (Lord *Askwith.*) Is it the business of the Attorney-General to employ a research agent or to prove the claimant's case for him by having an examination made of the documents relevant to that period?—No, not exactly, but in effect in recent years the cases have been so indifferently presented that it has

come to that. The Attorney-General's department has had to do it for the protection of the Crown.

470. (*Chairman.*) Has the Attorney-General any machinery which enables him to make research and say: "If you had looked where I have looked you would have found this entry, which looks pretty bad for your claim. Did you find that, and, if you did find it, did you pursue that matter, and, if not, why not?"—He did that perfectly definitely in a very recent claim. There were certain *lacunae* in the evidence of the claimant, and we were not satisfied, so personally I proceeded to search; I wanted something which was very necessary, and I discovered a certain will. In accordance with the rule we pointed out to the claimant that he should produce this particular will, and he said that he had searched and could not find it. We said, in answer, that with all respect we did not believe that, because we had it and had found it in the ordinary course. Then it was politely asked for by him and we refused to give it.

471. (Lord *Askwith.*) A claimant might very easily not find a thing that he did not want to find?—Exactly, and I am afraid that is what we felt in this case, and we said, "No, it is not our business or our duty to present you with documents which you ought to have found and which you can find."

472. (*Chairman.*) You had taken a copy, I suppose?—Yes.

473. And he wanted to borrow that copy. Did he find the will when you told him where it could be found?—Yes, he did. He could have found it before.

474. Was that the claimant who succeeded, or the claimant who was second?—The claimant who succeeded.

475. Was it very vital to the success which that claimant ultimately obtained?—There were a lot of cross purposes and irrelevant considerations in that case. We have to do that sort of thing over and over again; we cannot help it. We are there to protect the Crown. That is the view the Attorney-General takes, that he must protect the Crown, and, if he is afraid that something is being withheld or there is some evidence missing which he ought to have, he regards it as his duty to find it.

476. It is quite clear that is the right view to take of the duty. I hope the Attorney-General will also take care to rub in the importance of the things that he has found, in case the Committee might not thoroughly appreciate them. Is there anything else upon which you can help us?—I do not think so, unless your Lordships think the date I have given is too late. If that date is regarded as too late, another very convenient period would be at the beginning of the reign of Henry IV—that is 1399.

477. But there is another way of approaching it. You have thought of a date beginning at the beginning and coming down to your date at which a line could be drawn and no great harm done?—Yes.

478. That would result in the exclusion of claims that are at present rather *in nubibus*?—Yes.

479. There is another aspect of it, and that is to say that, except for very special reasons no peerage should be called out of abeyance where the abeyance has continued for X years prior to the filing of the petition which makes the claim. Of course, X might take you back to the date you mention, and then there is nothing in it; but is there any theoretical objection to approaching it in this second way and saying that if for so many years, either because the parties had ceased to be in a position to maintain a peerage, or because their views had changed and they did not wish to be peers, or because they were careless, or because evidence had disappeared and the title was very doubtful, no one has taken the trouble to make a claim for the ending of this abeyance, then it should not be gone into at all. Is there any objection in theory to that mode of approach?—I do not think there is in theory. It might come up in a case where a claimant honestly believed that he was entitled to claim as of right because the co-heirship had come into unity of possession, and, on the other hand, it might not be quite certain whether a line of co-heirs had become extinct or not, and he would then put in his claim alternatively to an abeyance if not found entitled as of right.

480. (Lord *Askwith*.) Or to be sole heir?—Or to be sole heir.

481. (*Chairman*.) Still that is a case where the claimant has waited until he thought he was sole heir or was otherwise entitled as of right?—Yes.

482. Contrary to his expectation, it turns out that the peerage is still in abeyance; some evidence turns up that he was not aware of. Why in that case, if the abeyance has been of very long length, should he be permitted to have it terminated? Why should not he be left to wait until he or his descendants do become entitled as of right, if ever they do?—I agree it would come under the category your Lordship has mentioned, but all I was concerned with was that he should not in any way be debarred from coming forward and prosecuting his claim and, if he liked, putting it alternatively, because it might appear to your Lordships, as it did in the recent FitzWalter case, that although it was not absolutely certain that the line of co-heirs had become extinguished it was practically certain. That is the only case and it is a definite case, and that is why I put it forward.

483. That is a case which ought to be saved somehow, if there was any recommendation fixing a line measured from the date

of the petition backwards?—Yes. My meaning is really this: Taking the FitzWalter case as an illustration, so long as you can take it as of right and, alternatively, in abeyance, then you can deal with it in a way you could not if you draw the line. Supposing you said: "We will decide this really is, although there is doubt about it, a question of right and we will give you the peerage as of right" if that line had been drawn; but, if the line had not been drawn, you would then be able to say: "We do not agree to give this as of right because we are not entirely sure, and we recommend therefore that it be called out of abeyance in order that any possibly existing contingent co-heirship rights may not be extinguished."

484. (Lord *Askwith*.) You suggest the reign of Henry IV as the starting point of the period. Lord Redesdale's Committee mentioned the date of 11 Richard the Second?—Yes, in Richard the Second's reign, 1387, came the first barony by patent descendible to heirs.

485. 1387?—I am not fixing it absolutely within 10 years, but the end of Richard the Second's reign would be the end of the Plantagenets.

486. There was a statute in 5 Richard the Second, chapter 4, in which for the first time it was declared what the common law was—that it was the duty of a peer to attend the sovereign and Council?—That is recorded as a declaration, putting on one side all questions of tenure and making it a personal dignity by that particular statute.

487. The statute says: "The King doth will and command, and it is assented in the Parliament by the prelates, Lords and Commons, that all and singular persons and commonalties which from henceforth shall have the summons of the Parliament, shall come from henceforth to the Parliaments in the manner as they are bound to do, and (have) been accustomed within the realm of England of old times. And if any person of the same realm which from henceforth shall have the said summons, be he archbishop, bishop, abbot, prior, duke, earl, baron, banneret, knight of the shire, citizen of city, burgess of borough, or other singular person or commonalty, do absent himself and come not at the said summons, except he may reasonably and honestly excuse him to our Lord the King, he shall be amerced, and otherwise punished, according as of old times hath been used to be done within the said realm in the said case." That is the starting point, if you take that date, when they were by statute obliged to come?—Yes, but there is no doubt about it they were obliged to come long before then, because there were cases in which barons did not attend and were fined; the fines are recorded on the Rolls. Possibly that Act was passed because a great many people were not coming who ought to be there, and the Act called attention to the fact that they would be fined if they did not come.

488. About the lapse of time, there is an interesting judgment of Lord Chancellor Cottenham in the Hastings case in 1841, where a peerage in abeyance was not claimed for a long time, and he explains it away by saying that at that time the daughters and their descendants were not quite sure whether the doctrine of *possessio fratris* continued to exist?—I think there can be no question in law that lapse of time, as the law is at present, is no bar to a claim.

489. For instance, the Strabolgi case?—Yes, that is one case.

The Witness is directed to withdraw.

Ordered: That the Committee be adjourned to Wednesday, 10th November, 11 o'clock.

Die Mercurii, 10° Novembris, 1926.

LORDS PRESENT:

MARQUESS OF BATH.	LORD HYLTON.
LORD KINTORE (Earl of Kintore).	LORD SUMNER.
LORD STANLEY OF ALDERLEY (Lord Sheffield).	LORD MUIR MACKENZIE.
	LORD ASKWITH.

LORD SUMNER IN THE CHAIR.

SIR HENRY FARNHAM BURKE, K.C.V.O., C.B., is called in and examined, as follows:—

490. (*Chairman.*) As Garter King of Arms you have a very extensive knowledge of peerage and genealogical questions?—I have some little knowledge.

491. You have been good enough to furnish us with two appendices. Appendix A is a list of baronies in abeyance, and Appendix B is a list of claims to such baronies which are actually now either before the Attorney-General or the House of Lords?—Yes. Document 8 and 8A.

492. We will take the first list just to see that I follow it quite clearly. The list gives in alphabetical order the date of creation, the date of abeyance, and whether or not the barony is under attainder?—Yes.

493. Am I right in saying that if it is under attainder nothing can happen effectively until an Act of Parliament reverses the attainder?—That is so.

494. So, if it is not a profane metaphor, those are in cold storage?—It has been the custom to annul the attainder if the Committee for Privileges so recommend.

495. Those baronies are specially barred for the time being?—Yes, for the time being.

496. As to the others, the date of creation is the date at which, as far as your records go, the summons and sitting took place?—Yes, the first summons.

497. The first summons which was followed by a sitting?—Yes.

498. Of those, the proof there was such a summons and such a sitting you have in the records?—It is so stated in printed books of reference and so on.

499. Then where is the date of abeyance obtained from—is it from the books of reference?—Yes, the books of reference.

500. What sort of evidence is it supposed to depend upon—actual knowledge that the barony on the death of A.B. fell into abeyance among certain co-heiresses?—Yes.

501. Or is it simply that after the death of A.B. no more was heard of it?—These are more or less the dates of the death of the last holder when there was nobody to succeed except co-heiresses.

502. According to the books it is known that on the death of the last holder there were co-heiresses and no male heirs?—Yes.

503. They do not include cases where on the death of a particular holder nothing more is known?—No. These are all baronies in abeyance; they are not dormant baronies.

504. They do not include any that can be dormant. They are all known to be in abeyance?—Yes, probably. I should have taken a note of it if it had been deemed that these were extinct or anything like that.

505. I suppose the books of reference to which you refer are the "Peerages" we all use?—Yes, and they are taken to a great extent from records in the College. This is not supposed to be an official list; it is only what I made out in a very short time.

506. Certainly, but it is a great guide to us.—Yes, it is a rough guide.

507. You say in your memorandum that, in order to prove a sitting, according to the practice of the Committee for

Privileges you must produce either an entry on the Rolls of Parliament or an entry on the Journals of the House?—Yes.

508. Then, as the Journals of the House only begin in 1509, for all the earlier period claimants are thrown back upon the Rolls?—Yes, what exist of them.

509. The Rolls are known to be so imperfectly kept that, although you may by some accident find the name of a peer recorded as sitting, you know from other omissions that many other peers may have sat but their names never happened to get on the Roll?—No, because they did not appear at a trial or in some other way that would have been recorded.

510. Then it follows from that, does it not, that, as regards the descendants of persons who were summoned to Parliament and sat, it is a bit of luck whether they can prove their baronies or not, depending on whether some circumstance occurred to lead to the names being recorded on the Roll?—That is it, unless they were at a trial or some other reason of that sort existed, like the case of the Barony of St. John (one of our most historic baronies), the holder of which never appeared at any trial and could not prove before your Lordships' House a sitting.

511. Then it works arbitrarily with regard to either the recognition of the original barony or the proof of a claim to have an abeyance terminated?—Yes, it does to a certain extent.

512. Since 1509 are the Journals of the House fully kept? They are kept in a regular way then and a peer attending would be noted.

513. Then the period at which these baronies by writ of summons followed by a sitting came to an end is some time in the sixteenth century?—How do you mean, came to an end?

514. I mean with no further creation in that way?—No, they were not created by summons.

515. They were all created by patent?—Yes, after that.

516. Are the Journals which began in 1509 any particular use for this purpose? I mean, are there cases in which there is proof of a writ of summons long before 1509?—Yes, and a sitting after that.

517. But no sitting until after 1509?—No, but that is good.

518. Out of this list which you have given, which contains 51 baronies, I see 11 are under attainder. The 51 baronies now in abeyance are cases where sittings could be proved?—Yes.

519. Therefore, all that remains for the claimant is to prove that he is a descendant of one of the co-heiresses and that he

is the senior representative of the descendants of that co-heiress?—Yes. I have since added to that memorandum two more paragraphs: "Of these 34 claims to baronies probably one-half would for all practical purposes be too difficult to prove, thus leaving about 17 which may have to be dealt with in the course of the next few centuries."

520. There is a paragraph in your original memorandum in which you say: "In quite a third of these 51 baronies it would be impossible to prove the necessary pedigree"—that is 17—"thus leaving 34 baronies in abeyance which are liable to be claimed."—Yes. Of those 34 probably one-half would, for all practical purposes, be too difficult to prove.

521. Why?—The great thing in proving these early baronial pedigrees is inquisitions *post mortem* on people holding land of the King. These inquisitions *post mortem*, being held according to feudal law, find, say, that two daughters would be co-heiresses, or it is stated that the co-heiresses are so-and-so. So they are directly on the point at the time, but there are not many records in existence. If you get away from that you immediately have more difficulty and the records are not so easy, some of them being quite impossible. One has tried it several times in the case of many of these early pedigrees, and as to half of them it is impossible to assume that they could ever be proved. That is a sort of rough estimate.

522. Except for a chapter of accidents those 17 are mere curiosities?—Yes, exactly.

523. So there are 17 as to which you say it is impossible to prove the pedigree?—Yes.

524. Seventeen others as to which it is practically out of the question?—Yes.

525. And that leaves 17 cases in which it may be a practical matter?—Yes, and which, again, might be divided by saying a certain number of those 17 might be very difficult to prove, so difficult that it is not worth trying it.

526. Does this lead to your conclusion that it is not a very serious matter to deal with abeyances?—That is my view of the subject.

527. You think the area is so small that if there is a grievance it is not a serious one?—I do not say that there is any reason to suppose there is a grievance, but, if it be so, it is like shutting the door of the stable when the horse is out.

528. In your Appendix B there are ten claims which are already in being somewhere or other. Are those included in your 17?—No.

529. Then there are those ten cases which may or may not be good and which will be made?—Some of them are up before the Committee for Privileges now.

530. And there are 17 cases as to which you think there might possibly be a serious question?—Yes, the only 17 which may occur in the course of the next 200 or 300 years.

531. On the other hand, if there is anything unsatisfactory with regard to the present practice relating to the termination of abeyances, of course, that is a recurrent matter, because any one of those peerages that has fallen into abeyance and been terminated may fall into abeyance again. Of course. For practical purposes we ought not to expect more than about half-a-dozen more of these peerage claims to occur, that is extra ones, in our time or probably for the next hundred years, out of the 17. That is my view—that, roughly speaking, we need not expect more than about half-a-dozen.

532. Then the practical question, in your view, relates to those that have already been presented to the Committee for Privileges and dealt with, in which cases abeyances may recur? —Yes.

533. And you think something like half-a-dozen more are outstanding and might still turn up?—That is my view. With regard to fractional representation of baronies in abeyance—a matter which is also before you Lordships—the practice has been that the holder of a small fraction is on the same footing as the representative of one-half, and I cannot see that much is to be gained by altering the practice on this point. If a barony is represented by 100 co-heirs the Crown can call the barony out of abeyance in favour of the most important of those 100; whereas any rule restricting the prerogative of the Crown might exclude the case of the most important co-heir.

534. Upon that may I observe that I do not think this Committee has any disposition to restrict the prerogative of the Crown or suggest such a thing, but what might be done, if it was necessary to do anything, would be to make our recommendations for the guidance of those who advise the Crown, leaving the fullest exercise of the prerogative to be exercised in special cases, of which the Prime Minister would be the judge.—Saving the prerogative of the Crown.

535. Yes. So that particular point you make, which I appreciate, could be covered under the full powers of the prerogative?—Yes, but that does not quite answer the point. My point is this: The opinion of this Committee will be very important I should think, for the King would probably carry out any views of the Committee. If it is recommended to His Majesty that nobody who has not got, say, half of a barony should have it called out of abeyance, you are then more or less, without directly doing it, restricting the prerogative, because

you are advising the King to give it to that half and ignore the others. You will remember how a barony may go into abeyance. If the original Baron had two children, a senior daughter and a younger daughter, and the senior daughter left one hundred co-heirs, roughly speaking, and the younger daughter is only represented by one person, it is clearly a mathematical problem, because if you restrict it only to the representative of the half, that is the representative of the younger daughter, it is a hundred to one you have not the best man of the one hundred and one claimants.

536. That is so, if it is a matter of mathematics?—You have one hundred to one against your hitting the right man in point of position and personality.

537. Then would your view be that, supposing you have before you the names and the particulars of the whole body of descendants who could claim, the right thing is not to prefer one to the other by reason of the original conditions under which the barony fell into abeyance but to look to the present.—That is my view of it.

538. And prefer the worthiest?—Prefer the worthiest, who might be only one-hundredth part of the representation, whereas the other man might be one-half.

539. And whose worthiness would depend entirely on his personal qualifications?—And his position.

540. (*Lord Stanley of Alderley.*) Supposing the worthiest is not a claimant, as sometimes happens?—Of course, if he is not a claimant that does not affect the issue at all. The King could call it out of abeyance in favour of a person not a claimant, but, at the same time, it would be rather unfair to the people who had gone to the expense of proving the case not to accept them in preference to the others.

541. Then you are by no means getting the worthiest under those circumstances?—No, but the Crown has, I think, a chance of doing so.

542. (*Chairman.*) I think that seems to indicate that you put forward this view—that there is something in the nature of a right on the part of those who do claim to have the abeyance terminated and to get a termination of it in favour of someone or other of them?—Yes.

543. And, if there are other people who do not choose to claim, their qualifications need not be taken into account?—They never are taken into account, but they ought to be there.

544. The result of that is when there are ten persons who might claim and only one claims who thinks it good enough, automatically the abeyance will be terminated in his favour?—No, they can stop it.

545. They can, but, according to your view, it should be so, because none of the other people are claiming?—That is so.

546. Your view is that in the ordinary course the one claimant who proves his descent should get the abeyance terminated in his favour?—I am talking now of 50 years ago, when certainly the practice was that any claimant for a barony to be taken out of abeyance would first go to the King and say: "If I prove my right, am I likely to get your Majesty's consent to call it out of abeyance." If the King or the King's Minister or somebody said: "I will not tie myself to anything," then the case did not go on.

547. I do not think I had appreciated from the previous witnesses that we have heard that there was that stage. I thought the practice now was that you petitioned at your peril?—Yes; but I am speaking now of the practice in my father's time; he was always very interested in peerage cases, and, talking of 50 or 60 years ago, he said that at that time no one claimed a barony who had not got a little support from the Crown beforehand.

548. We have had instances given to us in William the Fourth's reign and in the early years of Queen Victoria's reign in which under one Prime Minister abeyances seemed to be terminated very easily and under another Prime Minister very charily?—Yes.

549. So I suppose even then the discretion of the Crown was exercised, whether this practice of getting some encouragement somehow was in existence or not?—Yes. From what I am informed, that sort of custom was in existence really until a certain number of years back.

550. Now, apparently, the practice as it is known is: A petition; the petition referred to the Attorney-General, examined, and either held up because no sufficient case is made, or eventually reported on and referred to the Committee for Privileges?—Yes.

551. The Committee for Privileges then reports either that the descent is not proved or that the descent is proved, and that report is presented, and thereupon His Majesty, under advice, decides what course shall be taken?—Yes, the Committee for Privileges report to the House.

552. And the House, if it accepts the report, places it before His Majesty?—Yes.

553. If that is the present system there does not seem to be any point at which this indication of a favourable wind can be sought?—I am sure that for many years it has been just a formal thing, as your Lordship says.

554. It is not now any different from the period you are speaking of, when, the formalities having all been completed, the Minister may advise that it is not expedient that the petition should be granted.—What I meant to say was that

before any steps were taken to prepare a petition and get the evidence, generally it was found out at Court whether, if a decision was favourable to the claimant, it would be favourably considered by the Crown.

555. (*Lord Stanley of Alderley.*) At Court, or by the Prime Minister, or both?—I think it was then at Court, and it has since more or less drifted into the hands of the Prime Minister.

556. It has always seemed that the Prime Minister was a very important person to judge by the variation in the ease with which peerages were called out of abeyance?—Under one Prime Minister it was easier to do it than under another.

557. (*Chairman.*) What it may have been in the seventeenth or eighteenth centuries probably it would be difficult to ascertain now, because the position of Ministers is different and the records are absent?—Yes.

558. But from the time when the Prime Minister became the Minister who advised and whose advice presumably was taken, there has been no further suggestion, has there, of anything except this regular procedure which may terminate by the grant of a petition or refusal of the petition exactly as the Crown pleases at the end?—No.

559. I mean, there is not any doubt in your mind, is there, that the whole of this practice about terminating abeyances rests in the discretion of the Crown and is not a matter of a right in the petitioner?—Exactly; it is altogether in the discretion of the Crown, but I do not think that up till quite recently the Prime Minister interfered in the matter at all.

560. We have been told the practice of Lord Melbourne—which is a good while ago—differed remarkably from the practice under Sir Robert Peel, and we have been told that recent Prime Ministers have had the whole thing undoubtedly in their hands independently of all other Ministers, but kept no record of what they did, until, in the time of Sir Ronald Waterhouse, something more definite has been put on record?—Yes, there is more continuity in the papers now. Perhaps you would find information on the point in Buckingham Palace; they have a series of books there on the dealings with the subject, and you might gather from the correspondence whether it was a personal matter of the King or whether it was done constitutionally under the advice of the Minister.

561. I think for practical purposes all we really want to be quite clear about is that in this matter, as in all other matters of a public nature, what the Sovereign does is done under the advice of a Minister?—That is the very point.

561A. In what way it is begun or to what extent the matter is developed does not matter, but it is one of those things which is done constitutionally on ministerial advice, the Minister

concerned being the Prime Minister, the First Lord of the Treasury, and the ultimate issue of it all being entirely in the discretion of the Crown?—Yes, that is the present position of it, but how far back that has gone I cannot say.

562. If that is the settled practice beyond a doubt, the next step would be that it is not possible to make a recommendation to vary the rights of a petitioner if he has rights, but it is possible to make a recommendation that in the exercise of discretion it would be better not to do this or unwise to do that. That is all I wanted to bring to you to?—Yes.

563. When you come to the exercise of the discretion of the Royal adviser that, of course, covers every exceptional case, but it is your view that if there is only one petitioner and other persons who would be entitled to petition have either not trouble to do so, or they despise titles, or have been prevailed upon to be good natured enough not to stand in the way, or what not, under those circumstances a single petitioner has a better right to have his petition granted than have all the others who are not present?—He has no better right, but it is considered that he has had the trouble of proving his case.

564. In modern practice he has a better chance?—Yes.

565. But he has no better right?—No. There is one thing I never understand, and that is why, when a barony is taken out of abeyance, all the baronies to which that man may have been entitled have not been taken out of abeyance at the same time—not that he claimed them, but if that had been done it would have shut out the greater part of the 17 cases I mentioned. It has been done in the past. Most of these baronies hang on each other. A man claims a barony from a certain man, but that man's mother may have been a daughter and co-heir of another barony. If a man has proved his case and you call a barony out of abeyance, if you wanted to limit the number of these feudal baronies in the House you might call the one barony out of abeyance in his favour and all the other baronies that come through him, so that nobody else could claim a higher or another barony. That would cut down even the few that are left to a very small extent.

566. I see that point, and do you think you could let us have a note of such cases?—I have not put them down. The point only occurred to me as I was coming here.

567. But you say it would cut down so many?—This is not quite in point, but take the three baronies of Cobham, Strabolgi and Burgh. If one barony had been called out of abeyance in favour of one claimant, the senior or any other co-heir should approach the Crown to incorporate any other baronies to which he was then the successor or might eventually succeed to the representation of. That naturally would knock out the other two baronies at once and probably a good many more.

568. Would the rule be this, that, where a barony falls into abeyance at a given date and the termination of that abeyance is granted, there should also be the grant of a termination of the abeyances of the other baronies which the same person had before he died?—Yes. That, to my mind, would cut out some immediately.

569. And the claimant to any one of them should be obliged if he succeeded to succeed to all of them?—Yes, he should.

570. (*Lord Askwith.*) Would you name the baronies, or have it left in a vague way?—You cannot ask a man to prove a thing he does not want to prove. It would prevent anybody else going to the trouble of claiming the other barony, because, if he did claim it and prove it, it would automatically fall on the man in whose favour the original barony was taken out of abeyance.

571. To go a step further, in the case of the Loudoun baronies and the earldoms which were claimed you would have all those, instead of being divided between Lady Loudoun and Lady St. Davids, go to one of them?—They would, naturally

572. What of a case like the Latymer barony. The senior co-heir, I think, was the Duke of Atholl. If the Duke of Atholl also had certain baronies you would allow anyone who claimed one of these baronies to have all of them?—One being called out of abeyance in his favour, he would have it with all other baronies to which he might hold a fractional representation.

573. But he would have sat as Duke?—The dukedom would not go with the same succession. If he had only a daughter the daughter succeeds to the baronies.

574. But if he sat through right of a female ancestor then all the things that apply to that female ancestor ought to belong to him and to nobody else?—They would accumulate on to him. If there was any object in reducing the number of baronies by writ that would immediately solve the question, and if it had been done from the beginning there probably would not have been 30 such baronies altogether.

575. (*Chairman.*) I gather you have not very much sympathy with reducing the number of these baronies?—Personally I have not.

576. You regard them as interesting survivals?—I look upon it, as the public look upon it, with sentimental interest in having historical names in the House.

577. We should like to have your opinion upon the question of the mischiefs which the existing state of things can in your view be said to do. The one which I should like to put to you first is this: When a barony is called out of abeyance the successful petitioner who succeeds to the barony succeeds to it

with its original precedence?—As far back as you can prove the precedence. These baronies not being created by patent it is only the question of the oldest summons.

578. But that is very old?—Yes.

579. The result is that Mr. A. B., hitherto little known, in the year 1927 gets his petition granted, and he becomes Baron A.B. with precedence from the year 1350, or something of that kind, which is a little bit annoying to the Barons of 1351 and the following years?—That is a matter for them to decide whether it is annoying or not.

580. That is a suggestion, or one of the suggestions. Evidently you do not think it is a very much felt grievance?—I never heard of it as a grievance.

581. As you know, there was a very interesting discussion in the House of Lords a few years ago when Lord Askwith introduced this matter and, if I remember rightly, one of the things that was pointed out was that to have anything like an unsatisfactory system with regard to abeyances is material, because the effect of calling a barony out of abeyance in those circumstances is to give precedence over barons so far back. Supposing that is a matter worth dealing with, is there any possibility of granting the petition with less or no precedence? Is that consistent with the existing rules of Peerage law?—It is not quite according to any practice, but, of course, the recommendations of the Committee for Privileges and the decisions of the House very often say that it is to be with precedence of a certain date.

582. (Lord *Stanley of Alderley*.) They would not say with precedence of 1926, I suppose?—No, not in the case of an old barony.

583. (*Chairman*.) The ground of that is if they find the barony originally arose at that particular date?—They find there is a doubt about the date of the first summons.

584. Yes; but their recommendation is entirely directed to fixing the date at which on the evidence before them the barony by summons and sitting arose?—Exactly.

585. And the precedence is therefore given from the date at which in truth the barony was really created?—Yes, when they can be sure it was created.

586. I was suggesting that, in order to mitigate the abnormalities of terminating abeyances after 300 or 400 years, it might be possible to fix the precedence at a date which did not correspond to the original complete creation, but a date which would be in the discretion of the Crown?—I suppose for practical purposes you would omit all the period in which it had not been claimed and add on the period for which it was held by the original Baron to the present date, so that, if the original Baron sat in the House, say, for 30 years, you would add 30 years to

the date at which the Committee for Privileges sat, and so put it 30 years before, or something of that sort.

587. I was not thinking of anything of that kind, but, at the same time, that does act as an illustration. Supposing the suggestion was that the patent should be granted, but with precedence for the barony only from say 1860, or whatever date you like to take, could that be done?—I think it could be done. The only point is that surely it would be rather invidious to do that with peers holding baronies who have a certain precedence in the House now.

588. Not quite, because if you give an ancient barony less precedence than it otherwise would get, it is all in favour of those who are not put down. My doubt was this : The barony, such as it is, is the barony that arose in the Plantagenet times, and it cannot be surrendered, I think?—No.

589. The claimant to it might, by consenting to less than his full rights, affect the rights of the barony in his hands?—It could be done, as a matter of fact, because you are creating a barony by doing that, but it would not be a barony by writ at all; it would be a newly-created barony with a succession.

590. That is what I thought it would come to. Then that door is closed?—I think it is.

591. So the test in the case of this 300 or 400 year abeyance is between refusing it altogether and granting it with the precedence which attaches to this very ancient barony?—You could not even do that, because the barony either exists or it does not. If it exists you cannot create a new barony of the same title.

592. No, you cannot, and therefore every petition has to be refused, or, if granted, the precedence goes with the barony?—I am afraid it does. I do not think there is any way of getting out of it.

593. That being the difficulty, you are no doubt familiar with what we have been told a good deal about, namely, that the historical doctrine of baronies by Writ of Summons and subsequent sitting are a piece of legal imagination?—I have heard that before, but to my mind that is a matter more for constitutional lawyers to look into. Garter knows very little about it.

594. It is settled law, and no one contests that, but historically it is said to be a blunder of the seventeenth century?—In the seventeenth century the idea of succession in the way the practice has been ever since it was initiated, as far as I know, but it is a matter which I would not like to go into because it is far too deep for me.

595. I wanted to know if you accepted the historical scholars' view, or contested it?—I should not like to say one thing or the other about it.

596. You take the Peerage law as it is?—Yes; that is as much as I know about it. May I finish what I was reading from my Memorandum?

597. Yes, pray do?—"Again it may be that in the past a barony has been called out in favour of a co-heir who held one-thirty-second part. This barony might in the future again fall into abeyance amongst co-heirs each holding one-sixteenth." That is only with regard to these fractional things.

598. (Lord *Askwith*.) What is your point upon that?—It is only dealing with the other point I made, whether it is possible to prevent any co-heir to a barony applying to the proper Tribunal—namely, the House of Lords, for a declaration that he is the co-heir and, if it is not possible, what object is to be gained in proposing a restriction should be introduced. It is for a lawyer to say whether it is possible to prevent any co-heir putting in a petition.

599. (*Chairman*.) I do not think anybody suggested that he could be prevented from putting in his petition. The only suggestion is that he might not get it granted?—That is the only time when the Committee for Privileges can advise the Crown to step in, and that is really after the House have reported upon it.

600. That would be the time at which the intervention would take place, if ever?—Yes.

601. I have suggested to you what I understand to be one of the points that were criticised in the existing rules about abeyances. Has it occurred in your experience that there are any others which we should consider? We have had before us cases of what are called syndicated claims and cases where a claimant may have a very small fraction of the original right. Does anything else occur to you?—The only thing that occurs to me as bearing directly on what your Lordship says is the question of a fractional right. A fractional right does not appeal to me. To me it is the same thing if a man represents a half, and another represents a hundredth part. I do not think it really matters at all.

602. (Lord *Stanley of Alderley*.) If one man represents the whole of the co-heirs the question does not arise?—It is not a claim then. You do not ask the King to take it out of abeyance.

603. If one claimant represents the whole the abeyance ceases?—Yes.

604. (Chairman.) Then if a petitioner has no personal attractions, no public merits, no social position, or means which may or may not be adequate to the position of a Baron, and he chooses to petition and proves his pedigree, ought it to be against the grant of the petition that he is wanting in these other particulars?—To my mind it ought, and if you read Segar's

" Honour " you will see it was the practice in the olden days. It went further, and even if a peer lost his property it was suggested he lost also his dignity.

605. (Lord *Stanley of Alderley*.) Is that a law book or a novel? —It is a well-known book. Segar was Garter King of Arms at the time, that is about 1616.

606. You are much more concerned with the dignity than with the legislative functions of peerages?—Yes.

607. After all, peerages have legislative duties which are still of some importance?—Yes, but that was rather out of my mind then. I do not know whether I really explained what I meant about calling other baronies out of abeyance so that all the baronies of the original holder should go to the man who claimed and obtained one.

608. (*Chairman*.) I think I followed your very clear statement, but will you restate it to your satisfaction?—It is a thing which I should like to study, and I do not know how long the Committee is going to sit.

609. Would a fortnight enable you to study it?—It really means taking up all these 17 or 34 baronies—whatever the number is—and seeing how many hang on each other.

610. You have evidently been rather fascinated by the suggestion?—No, personally I do not like the idea of restricting it at all, but, if your Lordships like to restrict it, it is only my suggestion as a way of doing it.

611. (Lord *Askwith*.) If we consider that point in connection with the law that a man cannot baulk his descendants, and having a peerage in his blood he cannot defeat the right of his descendants, he cannot give it up?—But these are baronies which have not been called out of abeyance.

612. A barony which was existing and has fallen into abeyance?—Yes, and if he is a fractional co-heir it can be called out in his favour although he has not proved his right to the other baronies.

613. (Lord *Stanley of Alderley*.) Have you in mind any case in which a barony has been called out of abeyance in favour of a person who has taken no steps to get it called out?—I never heard of a case.

614. These baronies called out of abeyance are not dead, but are in a trance, so to speak, and by a miracle of the Crown have been resurrected?—Exactly.

615. As long as they are not resurrected they remain to all intents and purposes dead?—Yes, but they are there existing. I, as Garter King of Arms, have to advise as to new titles, and I must not let anyone take a title which is already in existence. They are existing enough for that.

616. I have before me a long list of yours, and also another list prepared by Mr. Doubleday, in which various names appear in some cases identical on both lists, but with different dates. The list which Mr. Doubleday gives is a list of baronies which he conceives on his information are impossible of proof?—That must be a rather useful list. I have not yet seen it.

617. There are about 14 more names in his list of the unprovable cases, that is as being baronies in which sittings cannot be proved, and therefore not subject to a successful claim.

618. (Lord *Hylton*.) We have a return of baronies, the creation of which can be established by writ and sitting, and there are 15 more in that list than the 51 which you give?—But are those baronies that have already been joined on to other baronies?

619. They are baronies to which succession may be established?—But are they established? Are they under some other Baron's holding?

620. They are now in abeyance?—If I had that list I could look this matter up in my records.

(Mr. *Proby*.) Perhaps I may explain that the list to which Lord Hylton is referring is a list, made up in our Department, of baronies not in present enjoyment, but the existence of which could be proved, that is to say, there was a sitting that could be proved. We have only tentatively in the case of those given people who may be co-heirs. We do not claim that it is absolutely final, but the list gives a fairly good indication of what the facts are.

(*Chairman*.) That is the return of baronies, creation of which can be established by writ and sitting.

(Mr. *Proby*.) Yes, it was handed in at the last meeting of the Committee.

(Lord *Stanley of Alderley*.) We have a long list of over 100 names given us by Mr. Doubleday of baronies in respect of which he conceives sitting cannot be proved, and therefore not made the subject of a successful claim.

(Mr. *Proby*.) Mr. Doubleday supplied most of the particulars for it, but it was a list made up in the Department, and is a return of baronies the existence of which cannot be proved. The return I have now handed to the witness is a list of cases where a sitting can be proved.

(Lord *Stanley of Alderley*.) The lists do not agree, because Mr. Doubleday's list contains names not contained in the other list.

(Mr. *Proby*.) You often get several baronies of the same name.

(Lord *Stanley of Alderley*.) And of the same date?

(*Witness*.) No.

621. But there are baronies in your list of the same name and date which I take it you consider are in abeyance, and therefore sitting can be proved. In Mr. Doubleday's list you find the same name and date in cases in which he says a sitting cannot be proved?—It is quite possible that one of us is incorrect.

622. Not only possible, but one of the lists must be incorrect? —Yes. I should like to look at both lists and see if I can advise the Committee as to these 15 extra ones. It strikes me as rather a large number. I could imagine two or three being left out, but not 15.

623. (*Chairman.*) We shall be glad to have your advice and we must be some little time before we can report.—How long can you give me?

624. I do not think we can say that, but we must have at least another sitting for evidence, and when we have finished the evidence we shall have to consider what we shall do.

625. (Lord *Askwith.*) Possibly some of the names may be held by an existing peer who has several peerages, but there is no absolute proof that the peerage has been called out of abeyance or that he sat under that title?—It might be that, or it also might be that there are many peerages which are very like each other and which are really the same barony.

626. Lord Stanley of Alderley says that they are the same name and the same date?—It is not quite that, but you get a barony which is really the same barony called out in favour of the son-in-law, or something of that sort.

627. There is a statement in your proof that the Rolls of Parliament are so scanty that there is no record on these Rolls of very many important transactions and it is only by an accident that a record exists of the sitting of a peer. Is it quite conclusive that other Rolls cannot be discovered?—I think they will not find any others. They have found some in the Record Office but I do not think the Committee take them as evidence.

628. On several occasions lately an attempt has been made to prove before the Committee for Privileges that a man has a claim to a peerage even though a writ and sitting cannot actually be proved by the Rolls of Parliament. In a recent case of Beauchamp of Somerset that was attempted. Is it not the fact that a great many more documents have recently been found which throw light on whether a man was a peer or not?—Yes, and there are any amount of corroborative documents to be found as to a peer having sat, but whether the Committee will accept them or not is a matter for each Committee and not for a general rule at all.

629. Up to the present the Committees do not seem to accept them with much good will?—There is a good deal of cumulative evidence available from witnessing Charters in the House, and so on, and entries in the records, but they have never yet been accepted.

630. In the same way an attempt was made some years ago to establish corroboratively by a new document a sitting in a good Parliament—the Fauconberg case, which failed. On this question of precedence is it the theory that there is a seat of a peer with a bar before it and that nobody can go and sit in that seat?—No, I never heard of such a thing.

631. The words used were " in cold storage "?—I thought you meant an actual seat in the House.

632. No, not an actual seat in the House, but a sort of idea that nobody could have the same place. If a man who had an ancestor who had sat in Edward III's reign applied for it as being in abeyance and claimed it, you said you could not give him the precedence of only 1860 but he could walk into his seat?—He must have and naturally would have a peerage. He is not introduced into the House; he is an old peer. Once you call a barony out of abeyance the baron is not introduced like a new peer into the House but he gets his writ of summons automatically.

633. And a new peer could not take that old place?—No.

634. Is there some Act of Parliament about the time of Edward III which prevents a man taking the same place?—In Edward III's reign there were certain Acts of Parliament giving limitations to the Earldom of Devon and the Earldom of Oxford, saying that a certain man and his heirs male were the holders of the Earldom of Oxford and not allowing anyone else to have it.

635. The De Veres had the Earldom of Oxford at that time?—Yes, and there was an Act of Parliament stating the actual limitations of the title, which was to go to so-and-so.

636. When Harley became Earl of Oxford he did not become Earl of Oxford but Earl of Oxford and Mortimer?—Yes, there was an additional title.

637. And the present peer is Earl of Oxford and Asquith; he cannot be Earl of Oxford as a title by itself?—No, because that title is already held by someone under this earlier Act of Parliament stating the limitations of the title—as long as there is a male descendant of Adam. It is to heirs male not of the body but heirs male whatsoever. So there must be an Earl of Oxford so long as there is a male person alive.

638. (*Chairman.*) I am not so sure about that.—It is " heirs male whatsoever " in the Act of Parliament.

639. It is " heirs male whatsoever," so it is not the whole wide world.—It might very well be, because if it became extinct in Europe it would go back.

640. You mean you can never quite tell if they are all dead?—No.

641. (Lord *Askwith.*) You said it did not matter in your view whether a man had a half or a fraction?—Yes, or one-hundredth part.

642. Is not that a rather novel theory?—On the contrary, it is the old theory that the Crown had power to take it out of abeyance, and in favour of the owner of a fraction, certainly from 1660.

643. We have had evidence given before us here in which it was stated that the only cases before the 19th Century in which the Claimant did not represent a moiety are those of Clifford in 1734, where he represented one-fifth, Botetourt in 1764, where he represented one-third, and Clifford again in 1776, where he represented one-fourth. The modern practice in this matter is widely different, for in Ros in 1806 the successful Claimant represented one-fourth and the opponent one-half; in Zouche in 1816, one-fourth; in Camoys in 1839, one-eighth; in Braye in 1839, one-fifth, and so on, until in the joint cases of Burgh and Strabolgi one of the petitioners represented one-eighteenth and the other two petitioners one-ninth each. In Strange of Knokin and Stanley the fractions were one-thirty-sixth and one-twenty-fourth according to the hypothesis adopted. There is a good deal of difference.—But I do not see any difference whether it is one-fourth or one-third. They took fractional differences from the earliest times. A man with one-half would probably be the person who held the original property, which would be a reason for his claiming it in those days.

644. When the Loudoun Peerages came up there were two Earldoms, Salisbury and Warwick, and seven baronies.—There is a case in point. If the baronies had all been taken out in favour of Lady St. Davids or Lady Loudoun, by one stroke of the pen it would have reduced the number of persons now before the House. There was Pole of Montagu and several others which really were the same barony, but they might be considered separate.

645. As a matter of fact some of those baronies have been called out of abeyance—Botreaux, Hastings, and Stanley in favour of Lady Loudoun, and Hungerford, De Moleyns and Strange of Knokin in favour of Lady St. Davids, but there are still some more left, and there is a claim by a Mr. Lubienski to one of them—three claimants to one set of baronies.—That is what I say. My idea is that if you wanted to limit the numbers you could limit them in that way. When you call a peerage out of abeyance, call out of abeyance all other baronies of which that peer had a fractional interest. I do not say it is a fair thing to do.

646. (*Chairman.*) It would be one way of getting rid of them, just as a statute vesting them all in the Garter King of Arms for the time being would be another way, but it seems rather arbitrary. You told us it was your duty when a title was suggested for a new creation to see that it was not one that coincided with any existing title?—Yes, that is my duty.

647. For that purpose do you consider the whole of these 51 baronies to be existing titles so that you can refuse to consent to their being granted afresh?—Yes.

648. Or in the case of those that are impossible to prove, do you consider yourself at liberty to use the name?—No.

649. Anything that has been the title of a barony must be differenced?—Or must have been proved extinct.

650. Extinction must be proved?—Yes.

The Witness is directed to withdraw.

Mr. H. A. Doubleday is called in and examined as follows :—

651. (*Chairman.*) What are your qualifications?—I think my only qualification is that I am the Editor of "The Complete Peerage."

652. (Lord *Askwith.*) You have been studying this subject for years?—Yes, for many years.

653. (*Chairman.*) To take it shortly, as the *précis* of your evidence is divided into four heads and they are all criticisms of things as they are, would you mind telling us what you consider to be the objections to the present practice and then we will develop your points one by one afterwards.—If you will kindly look at the return which I have had prepared for circulation, of all writs of summons issued in the years 1295, 1299, from 1300 to 1400, and from 1400 to 1500, you will see in the first column the numbers of those summoned, and these are all new men. It means that the 72 men summoned in 1299 are other than the 53 who were summoned in 1295. It is not a succession of writs in the same family. These were all new men. Document 9

List (No. 1) is handed in. Document 9

654. (Lord *Askwith.*) I do not quite follow that. The second line gives the date 1299?—Yes. In 1295, 53 men were summoned to Parliament and many of those were summoned again in 1299, but there were 72 new men summoned in 1299.

655. (*Chairman.*) Then your heading should be "Persons newly summoned."—Yes, it should be.

656. (Lord *Askwith.*) In 1300-1400 were 143 new men summoned?—Yes, and then from 1400-1500 there were 27. In the next column I show the number of cases in which there were no surviving heirs male. What I want to show in this table is the proportion of heirs male in those baronies that were summoned, that is to say, how far the summons was continuous. You will find that in 1295 the proportion of sons not summoned was one-fifth; in 1299 it was three-eights, and in 1300-1400 nearly one-half. Progressively the number of heirs male summoned became less as time went on. You were asking as to my objection to the doctrine. I think it must be clear to anybody

that it is extremely unlikely that Edward I would create 53 hereditary barons in 1295 and then add 72 more to them four years later. To my mind the thing is preposterous, because it was quite contrary to everything that is known of Edward I's history with his barons. The Committee have, I believe, already had a lot of evidence on these early writs, but possibly this has not been presented to you in quite the same form. I think it must occur to anybody that it is rather significant, as time goes on, to see the number of heirs summoned becomes less, falling from four-fifths to one-half. There are one or two points to consider also in respect of these summonses. From 1295 to 1363 there were 17 double summonses, and I have a list of those here ready for circulation. To the same Parliament there were summoned a father and a son, brothers, or a man and his grandson. No less than eight of these occurred in 1295.

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List (No. 2) is handed in.

657. Do you say that presumably was in respect of the same land?—Yes, I think that must be so.

658. Why?—The father and son were summoned to the same Parliament and, after all, at that time the writ was issued in consequence of tenure.

659. But might not the father be summoned in respect of lands in Devonshire and the son in respect of lands in Derbyshire if the family estates comprised both?—Perhaps it is not quite correctly put in my list. It is in respect of the same fief.

660. That is a very different thing from it being the same lands.—In most cases I think you will find, where there is any evidence as to the estate held by the person summoned, the father and son are summoned on account of lands comprised in the same fief.

661. (*Chairman.*) I think we must get your evidence as methodically taken as you can give it. Before developing any points will you tell us what the points are. You were beginning with a point which we have heard a good deal about, that is, that there is so much historical question about the existence in the middle ages of a real doctrine of baronies descendible to heirs-general created simply by writ and sitting, that when the doctrine of calling out of abeyance emerges (in, I think, the 17th century), historical students feel that the whole thing is unreal. That is the objection as we have had it presented so far, and I gather you are in sympathy with that objection?—Yes, absolutely.

661A. We have had a good deal of reference made to the literature on the subject already. What is your second objection to the present practice?—Setting aside the fact that a number of these barons by writ were also Knights of the Shire, that is to say, they were summoned as Members of the House of

Commons, there is evidence that men who were summoned to Parliament were not all on an equality although they were summoned to the same Parliament. You will find that the Close Roll of 15 Edward III contains a list of the Justices appointed in 1340 and a list of Barons is given—I call them Barons because they were summoned to Parliament——

662. But you are now developing your first point?—Yes.

663. You are giving us further reasons for thinking that the whole theory is so unreal that it is very unsatisfactory?—Yes.

664. But let us look at it now from 1926. If you are asked for your first objection to the present practice you say it is because it is so unreal. We will come back to that. Then supposing you are asked for your second objection, if that first objection is got over, have you any further objection?—Yes, my objection is that if, to the end of the 15th century, the summons by writ gave any inheritance at all, it was an inheritance to heirs-male and not to heirs-female, and, indeed, for a long time it is impossible to prove that the heir-general had any interest in the summons. The first actual case is that of Margaret Lennard who got the Barony of Dacre in 1604. I particularly want to draw your Lordships' attention to this question of the succession to baronies by writ in relation to abeyance. The first possible case of abeyance that we have is the case of Darcy. I have here, for your Lordships to consider, a pedigree of Darcy. That was a case in which Conyers Darcy petitioned in 1641 to have the Barony of Darcy conveyed to him and the heirs-male of his body. I particularly wish to direct attention to the fact that he asked for that limitation. The Barony was granted to him along with that of Conyers with limitation to the heirs-male of his body, and it has been regarded by all peerage writers hitherto as a change in the limitations of a dignity. I wish to point out that this is not quite an ordinary case of co-heirship. In most cases of abeyance the co-heirship is plainly shown as coming from a certain individual. If you look at this pedigree of Darcy you will see that Conyers Darcy, the man right at the bottom, had a male descent from John Darcy, the man right at the top. From the point of view of the law as at present developed Conyers Darcy was a co-heir to Philip Darcy, the son of the man at the top, and he derived his co-heirship through Margaret, the younger daughter. I do not believe that at the time this action was taken in response to Conyers Darcy's Petition any regard was had to that co-heirship at all, because there is a very curious thing in the warrant for the granting of the Barony of Darcy to him, which says that the Barony on the death of Philip fell to co-heirs and Conyers Darcy is a co-heir of John Lord Darcy—that is the father of Philip. Now, he was not a co-heir to John Lord Darcy at all; he was heir-male. I do not believe that at that time they had any regard really to Conyers Darcy's co-heirship coming through his mother. All they regarded was his male

descent and that he had asked for a limitation in tail-male. If we could only rid our minds of the doctrine as at present developed and regard the case from the point of view of the man living at that time I think we should see that nobody had any idea then that a writ of summons gave succession to the heir-general. On that point there is evidence to be found through certain cases of which I have a note. In this very case of the Barony of Darcy, if you look again at the pedigree you will see that Thomas Darcy, the heir-male of John Darcy, the man at the top, was summoned in 1509. I think that was a perfectly natural consequence. The Barony had ceased on the death of Philip and it was a perfectly natural thing for the heir-male to be summoned subsequently. In fact that was done in the case of Burghersh in 1330 and the case of Berkeley in 1421. In this case of Darcy and also in the case of Dacre—where there was not an abeyance it is true, but the heir-general had married Richard Fiennes, who was summoned to Parliament as Lord Dacre—the heir-male was summoned simultaneously to the same Parliament. I think my theory is also borne out by the fact that in the case of Clifford and of Strange you have writs issued in error, as they are called at the present day, in the year 1628; but I think from the point of view of those who issued those writs there was no error at all, because they were summoning the heir-male which was the natural thing for them to do. I think, therefore, really the question of abeyance probably developed very much later than we suppose. The first case which is now accepted as unchallengeable is, I think, Windsor: but in view of all this evidence as to the heirs-male I cannot help thinking that possibly the words used in the case of the patent of Windsor "to him and his heirs" were loose. There have been many cases in which expressions raised in patents and other documents have been loosely used. In fact I think your Lordships may remember that just after the accession of His present Majesty the patent of a new Peer was read in the House and it was discovered that it was stated to be created by Edward VII, whereas the patent should have contained a statement that it was created by George V. So these mistakes do occur, and I feel rather inclined to suggest that in the case of Windsor, which is accepted as the first undoubted case of abeyance, it might be that it was loose wording in the patent. Anyway all the evidence up to that point seems to be against the possibility of anything like abeyance as the consequence of the issue of a writ of summons.

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(*The Darcy Pedigree is handed in.*)

665. One of your other heads is to give instances of cases of baronies called out of abeyance which have affected the precedence of peerages already on the Roll.—I have drawn up a list of baronies taking precedence of the first barony by patent,

that is Stourton in 1448. There are no less than 30 of those all created from 1265 up to the year 1447. I have suggested as a note at the top of this list, "If the end of the Wars of the Roses be taken as the earliest date at which an hereditary barony by writ may be held to have been created, many of the baronies in the following list would not be in existence, and all would have precedence after instead of prior to Stourton." It seems to me it is a serious grievance in the Barons who were created by patent from the time of Stourton up to the present day that all these 30 men should be given precedence, many of whom had only the very smallest fraction of co-heirship and a fraction of a barony which, in some cases, historically considered, never existed at all. I have also a table of the fractional representation, which was a matter touched on a few minutes ago. I think Lord Askwith then read out that there were only three cases in which there was less than a moiety up to the beginning of the 19th century. From then onwards, of course, the number of co-heirs has increased very much, and there are five cases in which there were lines of co-heirs untraced. No less than four of these were in the case of Dudley, two in the case of Strabolgi, and two in the case of Strange.

(*The list of baronies by writ taking precedence of Stourton* (1448) *and the list of instances of fractional representation are handed in.*) Documents 12 and 13.

666. With regard to these lines that were not traced, if any one of them should arise and look into his pedigree and find he could have proved his claim if only he had been traced and told, he has got to wait until a new abeyance occurs and then contest it with the others?—Yes.

667. Which, I suppose, in your view, is a hardship upon him?—Certainly.

668. Still, as a practical matter, the untraced is for this purpose the unknowable?—Quite.

669. So you cannot expect a petitioner to trace what cannot be traced, but only to show that he has made all reasonable enquiries and cannot find anybody?—Yes.

670. Do you think it is reasonable that the requirements of the petition should include an exhaustion of all other lines as far as ordinary researches will do it?—I certainly think so, because, from my point of view, the more these baronies are restrained the better, and the greater the difficulty in proving the descent the better I am pleased.

671. What is it that is so objectionable to you about these baronies?—Because historically they seem to me nothing but nonsense.

672. Now I understand it. As an historian you say it is a great pity that the peerage law should have got embedded in it something that has no historical foundation?—Yes.

673. If we cannot extirpate it, at least let us reduce it to the minimum dimensions?—Yes.

674. As a lawyer one might perhaps say, if it was good enough for Sir Edward Coke and his contemporaries it may do for us.—But I should be inclined to answer that, great lawyer as Sir Edward Coke, no doubt, was, he was hopeless on peerage. In fact, the whole doctrine was based on an erroneous statement of his. He represented the Chester case so falsely that this doctrine has been developed in consequence. He referred to the Chester case as being a case which dealt with dignities; whereas it dealt with nothing of the sort. It dealt with the division of lands.

675. There it is—possession is nine points of the law and the law stands?—Yes.

676. But your view is that, being an erroneous law, it should be kept within bounds as far as possible?—Yes. There is one other point in this connection I should like to mention, and that is the great need there is for very scrupulous examination of pedigrees. There was a claim made in connection with the Frescheville Barony, and Lord Frescheville desired to have the precedence of his ancestor, as he called him, of 1295. Now it was not then known that Lord Frescheville did not descend from that ancestor at all. It was always supposed, until the " Complete Peerage " made investigations, that Lord Frescheville did derive his descent from the person who was summoned in 1295, but we have conclusively proved that he did not.

677. (Lord *Askwith*.) Frescheville was a case in Charles I.'s time, I think?—Yes, in 1662.

678. (*Chairman*.) That observation of yours, I take it, goes to the practice of the Committee for Privileges—if their practice was stricter a case like that would not occur again.—In Volume 5 of the " Complete Peerage " I made some remarks about the pedigree that was offered in the case of Fitzwaryn. In his summing-up Lord Dunedin went through the pedigree step by step, and based his arguments on the facts as they were supposed to be in that pedigree. As a matter of fact, I think I showed that every stage of the descent in that pedigree was wrong. It did not, as a matter of fact, affect the barony from the peerage point of view, but it might very easily have done so. Lord Dunedin had to depend entirely upon the facts that were offered to him.

679. That is what was occurring to me. The Committee for Privileges may be strict with regard to the proofs offered, but it has no machinery by which it can carry on independent researches, and until the recognised books of reference have got themselves brought into accord with more recent investigation, that kind of thing would always occur?—Yes, I think that is one

of the objections to allowing the revival of these ancient baronies, most of which never had any existence at all. The Committee for Privileges seems to be powerless to exercise such a scrutiny over the essential facts as to make it unquestionable that whatever decision they arrive at is a correct one.

680. One mode of exercising a scrutiny is to have somebody present who is interested in contesting the claimant's evidence and who had had money enough to spend in checking it. If the Committee for Privileges has only one petitioner before it and the services of the Attorney-General, it may be that something has not been discovered that might have been discovered?—Yes.

681. That is a difficulty worth drawing attention to. I think your fourth point is that you desire to call attention to the difficulty of fixing a date at which the issue of a writ of summons may be said to have acquired the creative quality with which it is credited by the modern doctrine as to barony by writ. That presents two branches: One is the difficulty historically, and, of that you would say it is all historical imagination, it cannot be done historically. The other branch is the difficulty now, as a matter of practice or law, of saying that before a certain date a writ of summons, however much a man may have sat under it, shall not acquire a creative quality. I think it is the latter point to which you now want to call our attention?—Yes, I come back again to the point I made in talking about the barony of Darcy. I think there is no question at all that towards the end of the 15th century there was something developing out of the Writ of Summons, something in the way of succession. There seemed to be not an absolute right, but a claim to succession in the Writ. But, as I remarked before, that could only have been the succession to a male. I think that is very much supported by the fact that in 1547 and 1548 there were three baronies revived that had been under attainder—Lumley, Stafford and Darcy. They were all baronies by writ. They were revived, the attainder was reversed by Act of Parliament, and the barony was given in tail male. I think that is a strong argument in favour of the fact that up to that time it did not occur to anybody that the Writ of Summons gave the heir-general any interest at all. It is quite true that ten years later there was another case of a reversal of an attainder in the barony of Dacre. Gregory Fiennes had the attainder in Dacre reversed in his favour, but the Act of Parliament by which that was done did not specify the name of the barony and the limitations to it; it was simply a reversal and restoration in blood. He was summoned to Parliament in the ordinary way, but I do not think that when the summons to Parliament issued anybody thought it gave anything to the heir-general. You have this case, and, as I remarked before, you have cases of these writs being issued "in error" some 50 years later. I think it all points to the fact that there was no idea, until certainly the beginning of the 17th century, that the Writ of Summons gave any

interest to the heir-general. The point was fought over and over again in various cases. In Grey de Ruthyn in 1641 counsel argued that there could be only male succession in the case of a Summons by Writ. There was also a very full and remarkable discussion of that very point in the Dacre case, when the barony of Dacre of the North ended in co-heirs and was claimed by the heir-male, Leonard Dacre. That case was peculiar because there was supposed to have been an award by Edward IV in 1473 giving the barony of Dacre of the North in tail male, and the barony of Dacre of the South to heirs-general. The whole question of how the barony of Dacre of the North had been created was fought out at great length between counsel for the heirs-general and counsel for the heirs-male, and the curious thing is that, although it was in the interest of one party to say that the effect of a Writ of Summons was to give inheritance to the heirs-general, counsel for that party agreed with the others that the only succession to a Writ of Summons must be in the heir-male; that was in 1569. Where you have the interest of one party so strongly opposed to the other and you get that argument, I think it is strong evidence.

682. I rather gather your view is that we have either got to make the best we can of the doctrine as we find it, or the intervention of a statute would be requisite to get rid of the whole thing?—I wish a statute could get rid of the whole thing. It would be the very simplest way of handling it.

683. The difficulty is that a statute to get rid of the whole of that might get rid of the whole of so many other things. You cannot suggest any remedy for the difficulties you are pointing out except finding some means of being more particular about granting petitions for termination of abeyances and restricting the number of cases in which they are granted?—Yes. I take it that nothing short of a statute would limit the operation of the writ as at present understood, that is to say, I believe it would be incompetent for the Committee for Privileges to say, "We will admit no claim which originates in a Writ of Summons earlier than 1500."

684. No, the Committee for Privileges has to take the law as it finds it. The reduction of what you regard as an objectionable feature is to be found in tightening up the rules under which abeyances are terminated?—Yes.

685 It has been suggested that paramount regard should be had to the personal claims in the way of public services, or the social position of a petitioner; that regard should be had to the extent to which the petitioner represents the inheritance; and that regard should be had to the length of time during which the abeyance has continued. Can you suggest any other direction in which tightening up could be effected?—I do not

know that anything else could be done, because the Committee for Privileges has no power; it must administer the law as it stands.

686. So I suppose.—All one can do is to hope piously that Attorneys General in the future, and the Prime Ministers, will not be inclined to do too much.

687. Of course, it is a pious hope in the case of officials of that kind. Is there anything else you want to put before us?—I think not, my Lord.

688. (Lord *Hylton.*) Have you sometimes attended the sittings of the Committee for Privileges?—Yes, on three or four occasions.

689. Has it ever struck you that the opposition to these claims on the part of the Crown through the Attorney-General might be put in a little more active and aggressive way.—I do not quite see what the Attorney-General could do unless he has facilities to examine the pedigrees in very great detail which, of course, would entail an enormous amount of work quite outside the Attorney-General's ordinary scope, I think.

690. The Attorney-General is obviously always a very busy man, and therefore perhaps not able to give his great mind to all the details of these pedigrees, but has it ever struck you that there might be some other means, or some other official entrusted with the duty of opposing these claims who could give more attention to them?—I think it would mean establishing a genealogical Department to investigate pedigrees. I doubt whether your Lordships would see your way to do that. Then also the question would arise, who is the most competent party to be appointed? I think there would be a good deal of dispute about it.

691. (Lord *Askwith.*) Have you known any case in which the College of Heralds has given evidence against a peerage?—I do not think so.

692. (Lord *Stanley of Alderley.*) With regard to these lists which you have supplied to the Committee, you heard the comparison I made to Sir Henry Burke just now. There are several cases where you include a barony in which you say sitting cannot be proved, and therefore it was not a barony at all, I suppose?—Yes.

693. In Sir Henry Burke's list there are names identical in appearance and date with names in your list which suggests to me that these baronies are in abeyance and therefore sitting can be proved?—I think it is a case of differences in names. As a matter of fact I know the College of Arms has the view in some of these cases that a proof of sitting is possible, but where I have investigated the same cases I have come to the conclusion it is not. It is a question of who is right, I think.

694. One must be wrong obviously?—Yes; it depends very much on what is accepted to be proof of sitting. The theory is that proof of sitting must be got from the Rolls of Parliament, but then the Committee for Privileges has very often admitted a proof of sitting which was not on the Rolls of Parliament, and Garter King of Arms may have in mind cases in which being a witness to some Royal document or something of that sort, which was completed at a time when Parliament was sitting in a certain place, should be deemed sufficient evidence of the man being present in Parliament. That did happen in the case of Strabolgi and in one or two others.

695. Sir Henry Burke also mentioned inquisitions post mortem. That would not be evidence of sitting?—No, that is simply one of the first steps in creating a pedigree.

696. Have you compared his list with yours?—No, I have not seen his list.

697. (Lord *Askwith.*) Except by custom is there anything to prevent the Committee for Privileges from taking circumstantial evidence as sufficient proof of writ and sitting?—I do not know what the practice is.

698. Is it your suggestion that except by an Act of Parliament you could not stop anything although advice might be given? Are you aware that the present report of the Committee for Privileges has simply to say whether the man is a co-heir or not, and whether he is a descendant of somebody who has sat, and who has received a writ and sat, with nothing else about him?—The Committee reports that, and then, I take it, it is in the hands of the Prime Minister of the day.

699. Supposing the House came to certain resolutions about what they thought the proper thing to be done, is there any reason why the Committee for Privileges in making their report should not call attention to the fact where these resolutions were not complied with?—I can see no objection.

700. It would still remain the prerogative of the Crown to take no notice of the resolutions of the House. The Crown would still have the prerogative to call a peerage out of abeyance on the advice of the Minister even though the resolutions were not complied with?—Quite. It seems to me the only way the matter can really be controlled is by a short Act of Parliament to the effect that any barony by writ which has been in abeyance over a certain term of years—say 50 or 100 years—shall be deemed extinct and incapable of emergence.

701. You heard Sir Henry Burke's remarks about the peerages all attaching to the one person in whose favour the barony was called out of abeyance. Have you any views about that?—It was quite a new idea to me, and it seems to me rather ingenious. Certainly it would get rid of a lot of cases such as Lady St. Davids and Lady Loudoun who between them have acquired six

baronies. If Garter's suggestion had been adopted it would have meant that one of those ladies would have got the six baronies and the representation would have been halved.

702. Would not the same thing have happened with regard to Darcy de Knayth and Fauconberg?—Yes. It is an ingenious suggestion. I do not know whether it is possible to carry it out.

(*Lord Askwith.*) I should like to hear what Mr. Ellis has to say about it.

The Witness is directed to withdraw.

Ordered: That this Committee be adjourned to Wednesday, the 17th instant.

Die Mercurii, 17° Novembris, 1926.

LORDS PRESENT:

LORD KINTORE (Earl of Kintore).	LORD HYLTON.
LORD STANLEY OF ALDERLEY (Lord Sheffield).	LORD SUMNER.
	LORD MUIR MACKENZIE.
	LORD ASKWITH.

LORD SUMNER IN THE CHAIR.

MR. ROBERT GEOFFREY ELLIS is again called in and further examined as follows:—

703. (*Chairman.*) Before asking you to put to us the things that have occurred to you on which our evidence ought to be supplemented, there is one thing I want to put to you. It occurred to Garter while in the Chair at our last meeting that, in order to prevent the dispersal of baronies by writ of summons which had been collected into one hand, in the ordinary process of descent before the abeyance commenced, anyone who applied to have the abeyance terminated should either be compelled to take the lot, if he got any, so as to keep them all together, or, if he, for some reason, did not wish to take the burden of too many baronies on his shoulders then, in the absence of any other simultaneous claimant to them, they should in some way be treated as extinct. That is what I understood to be Garter's

suggestion, but you heard it, and you can probably correct it. It is Question 645 : " (Q.) As a matter of fact some of these baronies have been called out, Botreaux, Hastings and Stanley in favour of Lady Loudon, and Hungerford, de Moleyns and Strange of Knokin in favour of Lady St. Davids, but still there are some more left, and there is a claim by a Mr. Lubienski to one of them—three claims to one set of baronies," and his answer was, " That is what I say. My idea is if you wanted to limit those numbers you could limit them in that way. When you call a Peerage out of abeyance call out of abeyance all other baronies in which that Peer had a fractional interest. I do not say it is a fair thing to do." Will you deal with that point first?—I was so amazed when I heard the suggestion that I went back to my chambers straight away and put down some notes which, if you will allow me, I will read :—The termination of an abeyance does not change the nature of a barony in fee. The root of title in a barony in fee is in its date of creation and this is a question of evidence depending on proof of writs of summons and of sitting. The suggestion that where an individual who is co-heir to several baronies should, if he be chosen by the Crown in respect of one of these baronies, have the abeyance of the rest terminated in his favour seems to me fantastical as well as inequitable. In each barony the petitioner has a right as co-heir only ; there are all the other co-heirs to each barony. There may be a different set of co-heirs to each barony, and why, if a petitioner is granted Barony A such grant should carry with it the destruction of co-heirship rights in all the other baronies I fail to follow. In one barony the petitioner's claim might stand out and disclose a strong position. In the others he might have no outstanding claim and only a small fraction of co-heirship. Moreover, the other co-heirs might prefer that the co-heirship should remain and the abeyance not be terminated. In any event no individual in whose favour an abeyance is terminated can sign away the rights of his descendants or of his co-heirs. The barony is in the co-heirship, and even if vested finally in an individual by a calling out of abeyance it is the old barony and an honour fixed in the blood which by law cannot be surrendered.

704. I quite see that where different sets of co-heirs are interested their rights must be preserved. As a matter of fact, except these two groups which have been referred to, do you know of any others? Is it a question of much practical moment?—I think when you come to work out all these pedigrees you will find that the majority of co-heirs are connected with a great many other baronies, though very often in very small proportions. Your Lordships will know of relationships in your own House. If the thing is really worked out nearly everybody is found to be related to everybody else, and when you get into these pedigrees that is the extraordinary position disclosed. A great many people do not know that they are

co-heirs at all, but still there they are, and they have some representation, and I should say it would be very inequitable and very wrong to attempt in any way to extinguish their rights.

705. I should think the practical thing about these groups of baronies which fell into abeyance at one time because they were in one hand is that they rather open the door to family arrangements. When an application is made for the termination of an abeyance, A petitioning to have the first barony terminated, and easing his way by arranging with B to make a claim, then or later on, for No. 2, and C for No. 3, leaving the rest of the co-heirs to chance it. That is, I suppose, the situation that might arise—I am afraid it is a situation that has occurred within our knowledge.

706. (Lord *Hylton.*) In the St. Davids' case?—I would rather not mention names, but it happened to come partly under my own notice as advising, and partly as representing the Crown. It certainly has occurred.

707. (*Chairman.*) It is a thing that could recur?—It could recur quite easily.

708. Assuming there is nothing in the nature of consideration given and received for the arrangement is there intrinsically anything which is highly objectionable about it?—There is another position. There might be three co-heirs, and the co-heir to the first barony might be a very rich person, and might actually arrange with the others that certain estates should pass to those others as a consideration provided they would not present a claim to terminate abeyance on their own behalf.

709. That is buying them off, but, apart from payment in meal or malt for their complaisance, supposing it is merely a friendly arrangement to facilitate the termination of two or three abeyances, is it highly objectionable?—I think it is limiting the prerogative of the Crown in this sense, that the Crown supposes that when it is asked to decide between co-heirs all the circumstances are presented to it, and that no private arrangement has been made.

710. That leads to the conclusion that if such a thing is tolerated at all it must only be on the terms of the fullest disclosure before the Committee for Privileges?—That is so.

711. In some way or other, I suppose principally by the vigilance of those who assist the Attorney-General, pressure must be put upon the petitioner to make a clean breast of it. The Committee for Privileges cannot do anything, because it has not the machinery for inquiry?—After all, would not it come to this? If you had that rule in force all you could do would be either to examine orally the petitioner, or to take a sworn declaration from him that nothing of the kind had happened; and you would have to be content with that.

712-13. Yes. Now will you take in your own way the things you want to deal with, which I think fall into two classes, namely, those points on which you have something more you want to say, and the points on which you think we have something more to learn?—I have had the advantage of two very long conferences with the Attorney-General, and he said that he thought perhaps your Lordships would not object if the results were put fairly definitely, not with any sense of adoption, but in order to disclose the Department's view provided your Lordships come to certain conclusions. The point of it is this: Supposing your Lordships were to suggest that the Attorney-General should give more detailed advice than he has done in the past in this matter, and, if he did so, the nature of the report he would make, and, last of all, the position of the petitioner with regard to costs.

(*Chairman.*) Yes; perhaps you will circulate it.

(*The draft paragraph is read by the Witness.*)

714. I notice you take the reign of James I?—I should have mentioned that before, as it is one of the points I wanted to speak about. Your Lordships on the previous occasion asked me if I could give you a date, and it has seemed to the Attorney-General, on considering this, that the first year of the reign of James I is a good dividing line, because subsequently to that date practically no new baronies have been created by writs of summons, and also that was just about the period when the rule of law began to be discussed and to be accepted as to these baronies by writ.

715. (Lord *Askwith.*) If you take the earliest cases, Darcy and Windsor, they would come after James I?—No, Windsor is Henry VIII, but it has already been the subject of a termination, and it is held to-day by the Earl of Plymouth. Darcy is regarded as anomalous.

716. (*Chairman.*) It is rather another branch of what we have before us, but at first my mind was attracted a good deal to having two classes of limitations of time: One was to take a date before which no abeyance arising should be ever terminated, and another would be to deal with cases that may still arise among the peerages that are at present in hand, and to say that no petition should be entertained as to which more than so many years had elapsed since the abeyance began, which would, of course, be a very much shorter term. That would deal with want of diligence in putting forward claims and the cases where all the co-heirs thought it was not worth troubling about or did not think about it at all. Of course, the fixing of that date would be a more delicate matter. But could not both be dealt with by saying that after an abeyance has commenced its termina-

tion must be petitioned for within X years or the petition should not be entertained?—Both would be dealt with in that way.

717. Both the ones that are still *in nubibus* and may emerge and those that are not yet in abeyance but may fall into abeyance could be covered in the same way.

(Lord *Askwith*.) We could cover both branches by one resolution.

(*Chairman*.) Logically it could be done by saying no abeyance should be terminated which has lasted more than 75 or 50 years. That would cover the last?—Yes, it would cover the last.

(Lord *Stanley of Alderley*.) That would be much more drastic.

718. (*Chairman*.) I do not say I have a view about it, but when I came to think it over, though it was convenient to treat them as two classes, I saw that one recommendation might cover both classes?—I had in fact drafted out the two clauses. The second clause was that where there had been an abeyance for three generations or for 100 years—I did not quite settle which to take—that also would apply, but on reading that through with the first note I came to the conclusion that if I left the first note out and adopted the second it would cover everything.

719. You are *amicus curiæ*, so if you have any suggestions will you please proceed to give them?—If your Lordships go as far as the second one and say that if there has been no dealing with an abeyance for 100 years therefore it should be cut out, of course it will cover everything that is in my first paragraph, because my first paragraph has two definitions—first of all, it must be before the reign of James I, and, secondly, the barony must not have been held individually, that is to say, not have come out of abeyance. That would cut out every single abeyant peerage now claimable which has not yet emerged from the welter of the pedigree hunters.

720. Do you say peerages now being claimed?—I should say now possible to be claimed.

721. There are some that are in claim already, and we had a list of them last time; there were eight, I think, but I think the particular date was not added to them when they put in their claims or how long their abeyances had lasted?—Those peerages in being to-day the abeyances of which have been terminated?

722. And those as to which petitions have been presented, or known to be in preparation?—Garter's "known to be in preparation" is rather an elastic term.

723. (Lord *Kintore*.) Take Beauchamp of Bletso?—We have only in the department and have only heard of one which is being seriously treated to-day.

(*Chairman.*) There was a list handed in showing claims that were either in being or expected to come to birth presently, but you say there are really only one or two.

724. (Lord *Hylton.*) I was told there was a gentleman petitioning to be Lord Montagu?—That is the one that has been reported on by the Attorney-General.

(Lord *Stanley of Alderley.*) There were eight of them according to Garter's evidence.

725. (*Chairman.*) I want to see whether there is anything in those cases which we really ought to save from the operation of any recommendation to the Crown?—I do not think there is anything in the two Beauchamps; we know those cases. Ferrers was the subject of petition in 1915.

726. (Lord *Askwith.*) One of the Beauchamps has been heard?—Yes, Beauchamp of Somerset, it is the same pedigree, practically. I think possibly it would be concluded that those two Beauchamps were connected. Montague is an arguable case, and has recently been reported upon.

(*Chairman.*) At any rate in none of those that are before the last century does it look as though there would be any great hardship in saying the rule must cut them short.

727. (Lord *Askwith.*) Who is the claimant to the barony of Montagu?—At the moment I forget the claimant's name.

728. Not Lubienski?—I think so. There is another point about these peerages. A good many of the claimants recently have been people who are already in possession of peerages and are simply collecting some more, so the rule would not be any hardship on them as it does not deprive the person petitioning of anything, because it would not give him any more than he has, which is a right to a writ of summons to come to the House. It only adds a title to those he enjoys.

729. (*Chairman.*) Do not depreciate that. Some people prize it?—I quite appreciate that, but it is in form a collection; that is all.

730. Looking at this list I see the dates 1351, 1471, 1572 and 1625. Abeyances which began at those distant dates one might think had no particular claim to consideration merely because somebody was thinking of making an attempt now to get the abeyance terminated. As to Beauchamp of Bletso in 1836, and Mordant in 1856, and Ferrers of Chartley in 1855, if your 100 years rule were adopted they would be saved automatically?—They would be saved, if those dates given there are dates at which your Lordships find an abeyance actually existed. Of course that would be subject to finding whether the peerage in itself actually was created. One cannot take those dates as definite.

731. Ferrers of Chartley may never have sat, and so on, but supposing everything else could be proved?—And that he did sit, and the peerage did go into abeyance in 1855, then it would be saved under the rule of three generations or 100 years.

732. Yes, it would?—So would Mordaunt in 1856, but not the others.

733. Now will you resume the point you were on when I interrupted you?—I do not think I have anything further on the evidence to suggest. I have been through it all very carefully, and have come to certain conclusions, but that is only a question for your Lordships' report.

734. You will judge by the questions that I am not extremely familiar with this topic, so if there is anything you have noted which showed that the questions were put by someone who did not quite know what his questions were about will you put it right?—There are two other matters connected with the inquiry I should like to mention. The first is the position of earldoms, which I think your Lordships have under the terms of your reference. It did occur to the Attorney-General that if you gave a decision on baronies, which, at any rate, were once in doubt on the point of law, and left out the earldoms, you would be choosing the subject which was the more difficult, and leaving on one side one which it was much easier to deal with and which would then become the subject of petition just as much as baronies in abeyance do.

735. I understood that there had been hitherto no petitions to call earldoms out of abeyance?—Yes, the earldoms of Norfolk in 1906 and Oxford in 1912, and proceedings were taken recently in respect of the earldoms of Salisbury and Warwick which raised several important points.

736. Have any of those petitions been reported on by the Committee for Privileges?—As to abeyance, no. When the last two petitions were brought forward the Attorney-General had to do a great deal of research, and it was understood that our activity came to the ears of the petitioners with the result that they withdrew their petitions. In the case of the earldom of Oxford a decision was come to on grounds other than abeyance; the abeyance point was left undecided.

737. What is the point about there being any difference between earldoms and baronies?—The difference is this: In the case of earldoms there has never been established any rule of law such as obtains in the case of baronies.

738. You mean Sir Edward Coke, and those who followed him, never said that you could be an earl by writ and sitting, but only that you could be a baron by writ and sitting?—That is so.

739. The fact that they did not say it, does not seem to make any distinction in principle if writ and sitting have such efficacy?—Except on the ground of contemporary treatment and the fact

that there never have been any petitions before your Lordships to terminate the abeyance of an earldom from that date until the earldom of Norfolk claim in 1906.

740. The distinction would appear to be that in the case of earldoms you have a clean ground for saying that at no material time did anybody believe that there was, or could be, an earl by writ and sitting, but, at the same time, if in law a writ and sitting make a peer, it makes an earl as well as a baron?—No, because it has always been held, and in recent cases there are dicta of your Lordships in the Committee for Privileges, that summons and sitting alone cannot make an earl.

741. Why cannot they make an earl if they can make a baron? —Because an earldom is also in the nature of an office. With the earls of the old creations there was the ceremony of girding with the sword as well as summoning to Parliament.

742. The duty of an earl was to take charge of a particular earldom?—That was the old theory, but I do not think it has very strong support among modern historians. The part that has strong support is the fact that in early days when earls were created they got their summons and they were either belted privately by the King or in the presence of Parliament. When that ceremony was done away with publicly the practice was mentioned in the patents of creation.

743. (Lord *Askwith*.) That would be only an arguable point. In modern days it would be rather difficult to make a difference in the status of peers as to the right to come into the House between an earl and a baron?—I agree. I am not for the moment asking your Lordships to decide the question of law, but simply to say that, so far as earldoms are concerned, if there is any ground for recommending the discontinuance of abeyance in the case of a barony there is stronger ground in the case of an earldom inasmuch as it has never been treated as abeyant by any Committee for Privileges.

744. And because the energy of seekers after pedigrees might be devoted to earldoms?—It is not unreasonable to conclude that it would, because if you close one door they would probably try to open another.

745. If the process of reversing attainders which has occurred in recent years were applied to earldoms there might be a good many that could be claimed?—A very considerable number.

746. (Lord *Stanley of Alderley*.) Would not it be likely that seekers after earldoms would value them more than baronies and, therefore, if earldoms were to be sought for they would be searched for by pedigree seekers as being more lucrative to them? —That is a natural conclusion I think. The attainder question is one I had meant to mention a little later. As to earldoms, the

principal ground I put it on is this: I do not say it ever will, but it might be found at some future date that supposing you start on the logical basis that you have got a rule of law which allows you to terminate the abeyance of a barony (which is admitted), you then proceed on that and fasten on to it a complementary rule and say that earldoms in fee can have an abeyance terminated.

747. (Lord *Askwith.*) If and when they could be terminated? —Yes, and there is nothing then to prevent you saying the same thing about other peerage dignities of marquessates and dukedoms if such be created in fee.

748. All peerages?—I agree, all peerages. It is true there might be a question whether you could have a dukedom in fee existing or a marquessate in fee. All that would come up.

749. It would be better to put it on the ground of all peerages? —Yes, I should say so. It would be more logical certainly, and then it would cover all possible future claims.

750. (*Chairman.*) But all dukedoms and marquisates are by patent?—Yes, all have been by charter or patent.

751. I was under the impression that it was clear from the dates The first duke who was created by patent was supposed to be a royal invention?—Yes, the royal dukes were the first.

752. If there is any ground for thinking that in the writ and sitting days there were dukedoms and marquisates which might now be revived, then what Lord Askwith says is right, that the simplest way would be to say "a peerage should not" and not "a barony should not."?—I think it would be very difficult to prove that there ever was such a thing as a dukedom or a marquisate in fee, and difficult indeed to prove that there ever was a viscounty in fee, because either charters or patents were the methods of creation in each case of dukedoms and marquisates. There is, however, a possible question of a viscounty in the Irish Peerage.

753. (Lord *Askwith.*) The words "peerage of any rank" would cover it, would not they?—Yes.

754. (Lord *Hylton.*) Would not the word "peerage" be enough?—"Peerage of any rank which is deemed capable of going into abeyance" would cover it.

755. (*Chairman.*) You were going to say something about the reversal of attainders. Of course, that is a matter for Parliament? —That is a matter for Parliament, but all bills for reversal of attainders in relation to peerage dignities are introduced on the initiative of the Crown; that is part of the law of Parliament. It has become customary, in order to clear the way for a grant to anyone applying for an abeyant barony to pray

for the introduction of a bill which will reverse the attainder only in respect of succession of one co-heir's line to the particular dignity claimed.

756. (Lord *Askwith.*) And after the dignity has been claimed and reported upon by the Committee for Privileges?—Yes, I believe there are one or two cases of that kind, but it is usual to prove your co-heirship subject to reversal of the attainder, and to put it in your petition and ask your Lordships so to find.

757. That is proving the co-heirship first?—Yes.

758. Then the attainder is reversed only for that man and his predecessors and it leaves sullied in blood a lot of the other co-heirs to whom it does not apply?—It applies only to his line of pedigree up to the time he has to date from, and it does not touch the other co-heirs at all.

759. (*Chairman.*) Then it is a pure act of benevolence?—Entirely.

760. To assist the one person who is petitioning?—That is so.

761. It is an Act of Parliament of benevolence?—Yes, but it is hardly on record in recent times that any bill introduced at the wish of the Crown has been defeated in either House.

762. No, and I suppose your suggestion would be that if it is matter for recommendation at all, the recommendation should be that it is undesirable except for special reasons that at the instance of the Crown any bills to reverse attainders should be submitted to Parliament?—The Attorney-General thought that it was cognate to the subject and perhaps should be mentioned.

763. I think it is, and certainly it would be as well that we should cover the ground.

(Lord *Hylton.*) Has not it struck you as extraordinarily unfair that certain people should have had attainders reversed in their favour and that other equally deserving or far more deserving individuals should still be suffering from the penalties of attainder. Take the case of the Dukedom of Monmouth. Why should it remain under attainder when the Barony of Strabolgi has been favoured? There seems to be no logic whatever in the position at present?—It is unfair, but perhaps one may put it in another way, that there did not appear to be any reason why the Strabolgi peerage should ever be taken out of abeyance. It all hangs on that point of view.

764. (*Chairman.*) Before we recommend anything I suppose we should be satisfied that there is something sufficiently wrong in the present state of practice to call for an alteration. Mr. Doubleday seemed to be filled with dissatisfaction, not only at the termination of abeyances, but at the existence of baronies descendible to heirs general. On the other hand, I was struck

by the fact that Garter took the philosophical view that it was not a serious matter and that antiquarian curiosities in peerages were, from a museum point of view, rather to be preserved than to be done away with. Of course, the field of criticism is quite a small one. I do not suppose that the people who read the ordinary newspapers are very much agitated on this question one way or the other. But what do you find, if you find anything, is the feeling among people who really have professional or personal concern with abeyances? Is it unsatisfactory at present in one way or another, or is it, after all, one of those things that might be endured?—I think the general feeling is this: Most historians consider that such peerages ought not to have been recognized at all, but as a lawyer one has to face the fact that there they are. It is thought generally to be rather a pity to go back in respect of any others if this can possibly be avoided, for the very good reason that in time this historical anomaly will, by the course of nature, probably diminish.

765. It is one thing for the zeal of the historian to object to the continuance of any system under which baronies are, from his point of view, manufactured to-day and called from abeyance that never existed at all. But we have to accept the law as to those baronies as it stands, and, if it is confined to the question whether abeyances should be terminated irrespective of the number of years they have endured, irrespective of the claims of others who do not think fit to prefer them, and irrespective of family or friendly arrangements among those who might prefer claims, do you think there is a distinct feeling that the practice with regard to it is objectionably anomalous?—Yes, I think there is a very distinct feeling among both lawyers and historians, and I think among other people too, that this method of creation—because that is what it comes to—is an anachronism and ought to be avoided wherever possible. There is also the public point of view.

766. (Lord *Askwith*.) It is also an injustice, is it not?—Yes, that is another point of view; but from the public eye it enables people to be placed in the House of Lords who have never performed any public services whatever, who have no particular merit, who have very little of the original blood, who have none of the original lands, and who yet, by managing to pick up something which has been dormant for 400 or 500 years, are made Peers of England with very old precedence.

767. (*Chairman*.) It is climbing in by some other way but at present a legitimate way?—Certainly.

768. So I am not quite sure that that way of putting it is very expressive?—If your Lordship pleases. Then the personal side is one which gives these old peerages a precedence in the House which places them in front of existing peers.

769. That, one would think, *a priori*, was a real grievance to the people who lost precedence in consequence?—Yes.

770. But, after all, there are many barons who think that their barony is so respectable that whether it is No. 1, No. 2, or No. 20 does not greatly matter?—I agree it is entirely personal to the peers concerned. It does not affect the public at all.

771. I think one may add that the peers concerned who feel it would probably be the last to say very much about it?—Probably.

772. You would incline, quite as much on historical as on legal or public grounds, to think that the feeling prevails that something should be done?—Yes, I think most historians who have studied the question at all think it is a page of history that ought not to be made use of to-day.

773. Personally, I think one may say that, as the House of Lords agreed to the appointment of this Committee, the House of Lords thought something should be done?—Yes.

774. Can you help us in any other way?—There is only one other point, and it is a practical point, so the Attorney-General asked that it be mentioned. If your Lordships do make any recommendation in the sense which has been discussed, you might take this into consideration if you saw fit: That where any petition claiming the termination of an abeyance is referred to the Attorney-General, the proper costs of inquiry and report by his Department be borne by the petitioner who shall, if required, give security for the same. What the Attorney-General has felt—and we have had a very pertinent example of it recently—is that in these days where cases are much more gone into, where it is very difficult and expensive in the matter of research, a great deal has been thrown on the Crown which ought not to be, and very often people who have not the remotest chance of succeeding in a petition put the Crown to very considerable expense because the Department deem it a duty, if a case is presented to them that is improperly prepared, in effect to prepare the case for the petitioner in order to see that the Crown and the House of Lords are not in any way misled.

775. I see the point. We should have to consider how far it came within the terms of our reference, because it seems to refer more to the practice either of the Attorney-General's Department or the Committee for Privileges?—That is before the petition goes to the Committee for Privileges.

(Lord *Askwith*.) Could the Committee for Privileges order costs to be paid by one side or the other? They could not have anything to do with the costs of an examination before the Attorney-General, and in some cases the claim never reaches them.

776. (*Chairman*.) Could that matter be dealt with by Standing Order of the House?—I think not, so far as costs incurred before the Attorney-General alone are concerned, because that is a question for the Crown.

777. That is in the stage when the petition has been referred to the Attorney-General but has not yet been handed on by him?—Yes. We should not have suggested the other at all, because that is within your Lordships' competence and nothing to do with us.

778. (Lord *Askwith*.) It is not in the competence of the House of Lords to give any order to the Attorney-General to say what he is to do?—It is not.

779. (*Chairman*.) Nor to authorise him to extract costs from the petitioner?—It might come in that sense, perhaps, if your Lordships were to report that the method now pursued frequently causes the Crown to incur considerable expenditure of public money.

780. (Earl of *Kintore*.) There is one point I want to raise with reference to your suggested report, the words of which were not taken down. In your evidence the other day I understood you to say that the procedure was that a petition was first of all referred to the Attorney-General and from him it went to the Prime Minister, and then it would be entirely in the Prime Minister's discretion?—No, it goes back to the Crown. First of all the petition must go to the Home Office, the Home Office forwards it to the Crown, the Crown endorses it with a reference to the Attorney-General for report, in whose Department the whole inquiry is carried out, and report is then made finally to the Crown who may or may not remit it for examination by the House of Lords.

781. (Lord *Stanley of Alderley*.) Which servant of the Crown endorses it, because I suppose it is not endorsed by the Crown personally?—It is endorsed by the Secretary of State.

782. The Home Office?—Yes, and in all the Attorney-General's reports he mentions that the petition has been received from the Secretary of State.

783. (Lord *Askwith*.) The draft model report about which Lord Kintore was asking you was not taken down. Can it be circulated?—I have a copy here, but the Attorney-General asked that it might be regarded as confidential.

784. Could it be circulated with a memorandum of what it exactly means, because it is not quite clear to my mind how you propose that it should be adopted, except as suggestions made to the Committee as to what resolutions might be proposed by this Committee?—All it means is, that, if your Lordships did have any resolutions which contained these points, then that would be the form of report which the Attorney-General might use. It was simply designed to be of assistance to your Lordships to show how your own resolutions would operate to affect the Attorney-General's Report.

785. They are simply friendly suggestions on the subject?—Certainly, nothing more.

786. (Lord *Hylton.*) I should like to hear whether, supposing claims of this kind are to be entertained in future by Parliament, you think some more expeditious method would be recommended by us than this extraordinary circumlocution, namely, reference to the Home Office, then to the Crown, then to the Attorney-General, then to the Committee for Privileges, and then all round the offices again. It seems that the piling up of costs must inevitably result to anybody concerned?—There are no costs so far as the Home Office and the Crown are concerned. The former is merely a conduit pipe.

787. Time also is consumed?—It takes a very short time.

788. There was the case of Lord Bolingbroke which took about six years after the Attorney-General had the papers before we heard it in the Committee for Privileges?—Yes, the petition is held up sometimes, but once it gets into the Attorney-General's Department it goes through as rapidly as possible and the Department invariably have to hurry up petitioners.

789. You cannot suggest to us any simpler method?—I do not think so. The experience is that documents come in fairly quickly and, if there is delay, that is on the part of the Petitioners. If your Lordships were to look back at the old cases 40 or 50 years ago when it was not the practice of the Attorney-General to inquire as closely as he does to-day, you would find that the Attorney-General's Report probably took about 1½ hours in preparation and the hearing before your Lordships' House often lasted into months and often years. To-day, however, through searching into the whole thing at the outset and sifting the evidence and demanding that certain things shall be done beforehand, there are very few cases before the Committee for Privileges which last three or four days, and, as a rule, they only last one or two days.

790. I thought the Grandison and Airth cases went on for months?—They went on for years, and, I believe, it was said that when nothing else was happening the Committee was requested to take some of the evidence which Counsel for the time being had then the time to deal with.

791. (Lord *Stanley of Alderley.*) We have dealt a good deal with the personal grievance of existing peers. Is a personal grievance a matter that concerns the Crown? Peerages are created, and I take it revived, by the goodwill of the Crown in order to improve the legislative functions of Parliament. Perhaps it would be well for this Committee to consider whether Parliament will be improved by the lavish or indiscriminate exercise of a discretion which the Crown is at liberty to refuse to exercise. That perhaps is a matter more for the Committee than

for a witness?—It is a method of creation which apparently does not conform to the rules in force for other creations.

792. If one knew the methods in force for other creations one might deal with that more clearly. In Garter's evidence there was a suggestion that all dormant peerages which might be claims by one claimant must be claimed. But you cannot compel a claimant to give evidence that he has such a claim, and there would be no evidence before the Committee for Privileges or before the Crown as to the existence of these other peerages in abeyance?—No, you must have regard to the rights of other co-heirs. One individual cannot settle other people's rights.

793. You cannot even deal with it if the suspected peerages in abeyance are only partly in him?—Certainly not. In order to be correct before he could consider signing away anything he would have to prove his pedigree with respect to all other suggested peerages.

794. (Lord *Askwith.*) There might be heaps of co-heirs who were not co-heirs to the peerage he was actually claiming?—That is so.

795. If he had to claim six peerages he might go until he was 80 years of age looking out for co-heirs?—It certainly might be to his descendants what one would be justified in calling a *damnosa hereditas.*

796. (Earl of *Kintore.*) The suggestion of Garter, though ingenious, is impracticable?—I think it is utterly impracticable.

(*The Witness is directed to withdraw.*)

(*Ordered that this Committee be adjourned.*)

Document No. 1.

MEMORANDUM DEALING WITH THE QUESTION OF ABEYANCE IN THE EARLDOMS OF SALISBURY AND WARWICK AND THE BARONIES OF FERRERS, BOURCHIER, COMPTON, MONTAGU, MONTACUTE, MONTHERMER AND POLE OF MONTAGU.

On the 16th March there were pending 11 claims to peerage dignities. One of these claims—that to the Earldom of Airth—raises questions with which this Memorandum is not concerned. Another—that to the Barony of Beauchamp of Somerset—although it depends upon the doctrines hereinafter discussed, raises other questions also.

There remain two Earldoms (Salisbury and Warwick) and seven Baronies (Ferrers, Bourchier, Compton, Montagu, Montacute, Monthermer, and Pole of Montagu), all of which were claimed by the present Countess of Loudoun and the present Viscountess St. Davids. These claims have now been withdrawn. The reason for the withdrawal is unknown. But the claimants are not precluded from returning to the charge on some future occasion. The results produced by the money spent in preparing for the case will remain in their possession, and it may be that the reasons—whatever they are—which have caused them now to withdraw may pass away. In any event, the facts that the claims have been made and pressed almost up to hearing make the claims apt illustrations of the working of the present law.

In the course of the year 1921 claims made by these two ladies to the Baronies of Botreaux, Hungerford, de Moleyns, and Hastings de Hastings, and to the Baronies of Strange of Knokin, and Stanley, have been heard and determined by the Committee of Privileges. The Committee reported in each case in accordance with the usual formula that the Baronies were "ancient Baronies in fee," that the Baronies were now in abeyance between (amongst others) the Countess of Loudoun and Lady St. Davids, and that the Baronies were at His Majesty's disposal. Accordingly in the first group the Baronies of Botreaux and Hastings, and in the second group the Barony of Stanley have been called out of abeyance in favour of Lady Loudoun, and in the first group the Baronies of Hungerford, and de Moleyns, and in the second group the Barony of Strange of Knokin, have been called out of abeyance in favour of Lady St. Davids.

As regards Botreaux, Hungerford, de Moleyns, and Hastings, Lady Loudoun and Lady St. Davies were two of the three co-heirs among whom the Baronies were in abeyance, the third being their sister, Lady Flora Hastings. But as regards Strange of Knokin, and Stanley, there were in addition to them seven ascertained co-heirs and heiresses, namely, Lord Jersey, The Duke of Sutherland, Lord Grey de Ruthyn, Lord Romney, Lady Flora Hastings, a Mr. Lubienski, and a Miss Kirwan, as well as two undefined groups consisting of the heirs respectively of Anne successively Lady Chandos and Countess of Castlehaven, and of Diana Lady Baltimore. Each of the ladies who divided these Baronies was heir to one undivided 36th (or, if the issue of Lady Castlehaven and Lady Baltimore is extinct, to 1/24th) of the impartible hereditament which she claimed.

It cannot be said as regards any of these co-heirs and co-heiresses that he or she had any more right, legal or moral, to have any one of these Baronies called out of abeyance in his or her favour than any other of the co-heirs or heiresses. Indeed, so far as Stanley and Strange of Knokin are concerned, if any selection were to be made it might have been relevant to consider that Lord Jersey and the Duke of Sutherland were descended from Frances the elder daughter of the Fifth Earl of Derby, while other claimants (including those in whose favour the

Baronies were called out of abeyance) were descended from Elizabeth the younger daughter of that Earl.

As regards the Earldoms now in question, very difficult points of peerage law, which have not yet been determined authoritatively, would arise for consideration. These questions are not relevant to the main subject of this memorandum, but it is perhaps worth while to point out that:—

(1) the last holder of the Earldoms of Warwick and Salisbury was Edward Plantagenet, the grandson of the King Maker, who was beheaded in 1499; and

(2) historically, though not in law, a claim to an Earldom based on the theory that the dignity is descendible to heirs general has much more to be said for it than a similar claim to a Barony.

As regards the Baronies, the law is clear. It is that where it is proved that A.B. was summoned* to a Parliament held in or subsequent to 1295 and sat in that or a succeeding Parliament, there was thereby created an incorporeal hereditament descendible to heirs general, and that, that hereditament being impartible, if upon the failure of heirs male there was more than one heir female, it fell into abeyance between them; that upon these facts being ascertained the hereditament is at His Majesty's disposal, and can be, as it is said, called out of abeyance in favour of such one of the heirs general as he thinks fit.

Such is the law, and upon these facts being made good to the satisfaction of the Committee of Privileges, their only duty is to report that the facts have been so established and that the natural consequences follow.

This being so, it then lies within the discretion of the Crown whether the Barony should be called out of abeyance, and, if so, in favour of which co-heir the discretion should be exercised. Until comparatively modern times the almost invariable practice was to call it out in favour of the successful petitioner, only if he were the representative of not less than one moiety of the dignity.† Thus Sir Harris Nicholas, referring in 1825 to the termination of the abeyance of the Barony of Ros, comments on the fact that the successful petitioner was only the youngest co-heir of one moiety of the Barony, the entire representation of the eldest co-heir being vested in Sir Henry Hunloke who had petitioned the Crown not to terminate the abeyance in favour of the younger co-heir, although that co-heir had been the petitioner in the proceedings before the Committee. Sir Harris Nicholas goes on to say "that he is not aware of any similar instance of the grace of the Crown having been exercised in favour of the co-heir who did not wholly represent one moiety of the dignity, excepting in the case of the Barony of Zouche of Haryngworth which is not precisely in point, because, though Sir Cecil Bishopp was only the eldest co-heir of one moiety of that Barony, no descendant could be traced of the co-heir of the other moiety after the time of the Commonwealth."

Nicolas' assertion does not appear to be quite accurate, but it does very nearly represent the facts, and it may be stated that according to the older practice it was necessary, in order that the petitioner should succeed, that he should represent a considerable fraction of the Barony. The only cases before the 19th century in which he did not represent a moiety are those of Clifford, 1734, where he represented one-fifth; Botetourt, 1764, where he represented one-third (Botetourt, as will shortly be seen, is the foundation of many modern malpractices); and Clifford again in 1776, where he represented one-fourth.

* In practice proof of sitting is enough, for the writ is presumed from the sitting.

† Strictly speaking, the word "moiety" and any other word imparting a fraction are naccurate. The essence of the hereditament is that it is impartible.

The modern practice in this matter is widely different, for in Ros, 1806, the successful claimant represented one-fourth (and the opponent represented one-half); in Zouche, 1816, one-fourth; in Camoys, 1839, one-eighth; in Braye, 1839, one-fifth; and so on until in the joint cases of Burgh and Strabolgi one of the petitioners represented one-eighteenth and the other two one-ninth each, and in Strange of Knokin and Stanley, cited above, the fractions are one-thirty-sixth or one-twenty-fourth according to the hypothesis adopted.

No doubt in the 19th century there must have begun the practice of previous arrangement between the petitioner and His Majesty's advisers whereby the former received some assurance that, in the event of success before the Committee of Privileges, the small fractional interest which he or she possessed (and, as will be hereinafter seen, the vast number of years of the abeyance) would not constitute a bar to the exercise of the Royal favour.

The law thus stated has no basis in historical fact. Abundant proof exists that in early mediæval times the issue of a writ to a man summoning him to attend Parliament made him a Lord of Parliament for the period for which the writ operated, and no longer. It gave him no claim as of right to receive a writ to any subsequent Parliament, and it conferred no such right of any of his descendants, whether in the male or female line. Nor did it occur to anyone at the time that it did.

Towards the end of the 14th century the practice began of creating peers by instruments of grant, such as patents and charters. But for some time the practice was not uniform. And the creation of baronies by writ and sitting still continued. Several were so created in the 15th century, two or three in the 16th, and one (Clifford) as late as 1623.

In 1387, Richard II created Sir John Beauchamp of Holt Baron of Kiddermister by patent, with a limitation in tail male. No further creation by patent was made until 1432, when Sir John Cornwall was by patent created Baron Fanhope without words of inheritance. In 1441, a Barony in tail male was conferred by patent upon one Ralph Botelier, and in 1442 the Barony of Milbrook was conferred upon Baron Fanhope, also without words of inheritance. In 1444, Sir John Talbot was created a Baron as Baron Lisle with remainder to his heirs being Lords of the Manor of Kingston Lisle. Meanwhile, disputes were arising from time to time among those Barons who sat by writ only as to their precedence. It is evident that there was considerable confusion as to the powers of the Crown and as to the effect of the instruments under which Barons sat in Parliament.

In 1597, there occurs the first definite acknowledgment that a writ without more creates a hereditary dignity. Lord Thomas Howard was at the point of death, and the correspondence between Sir Robert Cecil and the Chancellor shows that it was supposed that if he were during his lifetime summoned to the House of Lords by Writ, the effect would be to create a Barony descendible to his son. It will be observed that both Sir Robert and the Chancellor appear to have been ignorant of the modern doctrine as we now know it, for there could be no suggestion that Lord Thomas Howard could ever take his seat. The Warrant was to be signed by the Queen "instantly, for prevention of God's calling him to His Mercy, which I fear will be before morning."

The history of the succeeding years shows the growth of the doctrines that the receipt of a Writ had created a Barony (which was well settled by the time of Coke) and of the doctrine that the hereditament so created was descendible to heirs general. Coke, First Institute 16b, states:—

> "A man may have an inheritance in title of nobilitie and dignitie three manner of wayes, by creation, by descent, and by prescription. . . . Creation by writ is the ancienter way . . . And this Writ hath no operation or effect until he sit in parliament, and thereby his blood is ennobled to him and his heires lineall; and thereupon a baron is called a peer of parliament."

The first clear decision on the point, however, was in the year 1674 in the case of Clifton. There were special features in that case which it is not now necessary to notice and which made it remarkable. There were existing recent precedents in which no question had been raised as to the rights of the heirs general. The law is, however, generally regarded as having been "ascertained" by this decision, and Lord Redesdale's Committee in their reports on the dignity of a peer say "since that decision the law has been considered in different cases which have been before the House as settled by that decision."

Further than this it is unnecessary to follow the development of the law, but the practice deserves attention.

In 1604 Dame Mary Fane and Edward Nevill claimed the Barony of Abergavenny, the former being heir general and the latter heir male. After protracted legal proceedings in the Earl Marshal's Court, James I referred the claim to the House of Lords. The House referred the rival claims back to the King, "inviting him to ennoble both parties by way of restitution." Lady Fane happened to be a co-heir to the Barony of Le Despenser, and the King referred the matter back again to the House of Lords, leaving them to allocate both Baronies between the claimants. Nevill was accordingly summoned to Parliament as Lord Abergavenny, and Lady Fane received Letters Patent of the Barony of Despenser with the precedence of 1265. The case is mentioned here because the Barony of Despenser had been last enjoyed in 1461, and 143 years had thus passed before the abeyance terminated. Again, in 1641, Conyers Darcy, upon his petition for the Barony of Darcy, was by Patent created Baron Darcy and Baron Conyers with a limitation to the heirs male of his body. It has since been held (by the Committee of Privileges in 1903) that this creation determined the abeyance which then existed in the Baronies of Darcy and Conyers, and which had, at the date when the Barony was called out, existed for 223 years. The whole matter is involved in considerable obscurity, and the case, like that of Despenser, is mentioned here only by reason of the length of the abeyance.

But for the next 120 years there is no instance of a calling out after an abeyance of more than a generation. The cases called out in that period are Windsor (abeyance 18 years), Ferrers of Chartley (31 years), Clinton (29 years), Clifford (five years), Le Despenser for the second time (seven months).

In 1764 we come to the case of Botetourt, which, having regard to the peculiar circumstances of Le Despenser and Darcy, may be regarded as the first precedent for calling out after an abeyance of centuries. From March, 1664, to June, 1665, the title of Botetourt had been enjoyed by Charles Viscount FitzHarding, on whom it had been conferred by Patent granted in the former year. Except for this curious interlude, which in itself goes to show that the existence of an abeyance in an ancient Barony by Writ was not then recognised, there had been no Lord Botetourt for 358 years. After this case there was a return to a more sober practice. Thus, the Barony of Clifford was called out again in 1776, after an abeyance of one year; Willoughby of Eresby was called out in 1780, after an abeyance of one year. Howard de Walden was called out in 1784, after an abeyance of 96 years.

But with the nineteenth century the practice of calling out after the passing of an extravagant number of years came into full force.

Botetourt was called out again in 1803, after an abeyance of only 27 years, but then (omitting the cases of short abeyance, almost all of which are re-callings out of Baronies which had been called out and had then fallen into abeyance again and then been called out for the second and third time) we have Ros (119 years), Zouche (191 years), Berners (89 years), Vaux (175 years), Camoys (413 years), Braye (282 years), Beaumont (332 years), Hastings (300 years), Mowbray and Segrave (100 years), Fauconberg (440 years), Latymer (336 years), Furnivall (297 years), Burgh (313 years), until we come to the crowning absurdity of Strabolgi (547 years),

after which Dudley (159 years), Wharton (185 years), Cobham (273 years), and Strange of Knokin and Stanley (already alluded to) (327 years) seem but moderate efforts.

In early days, however, the mere fact that a claimant had proved the existence of the Barony according to the law as ascertained and his co-heirship to it was not conclusive upon the Crown as compelling the Sovereign necessarily to call out the Barony in favour of the co-heir or at all. The great crop of successful petitions in the first half of the nineteenth century, between March, 1838, and May, 1841, was during Lord Melbourne's premiership. (Vaux, Camoys, Braye, Beaumont, Hastings.) It was this flood of creations which provoked Disraeli's satire in "Sybil" (published 1845), where the peerage lawyer says:—

> "The Whigs and I have so deluged the House of Lords that if the Tories come in there will be no peers made. If the Whigs go out perhaps they may distribute a coronet or two among themselves, and I shall this year make three. In a word, if you wish to be Lord Bardolph I will undertake to make you so. . . . I will give you precedence over every peer on the roll except three (and I made those), and it will not cost you a paltry twenty or thirty thousand pounds."

Then came a check. During Peel's premiership Sir B. W. Bridges was found to be co-heir (heir to a moiety) and probably sole heir to the Barony of FitzWalter. This was a Barony which had a real history, and the abeyance in which had then lasted for less than 100 years. But it was not called out, and the inference must be that Peel disliked the whole system. Disraeli himself was responsible for the termination of only one abeyance—Mowbray—but the petitioner in that case was, as Lord Stourton, already senior Baron by patent. In 1845, the Committee of Privileges resolved that two co-heirs, both of whom had petitioned, were co-heirs to the Barony of Wharton, but it was not called out, and one of these petitioners, after 40 years' membership of the House of Commons, was in 1880 created Lord Lamington by patent.

Three other cases of refusal may be noticed, namely:—

1. *North.*—This occurred during the premiership of Lord Melbourne, when the Barony was found to be in abeyance between two sisters. The abeyance was very short and action might reasonaby have been taken. It is conjectured that the refusal was due to political reasons. Four years later one of the sisters died, the Barony "emerged," and the right of the petitioner was admitted.

2. *Grandison.*—By a resolution of 1858 the petitioner, Sir H. Bedingfield, was found to be a co-heir. He in fact represented one-twelfth part. One of the other co-heirs represented one-third, and the total number of co-heirs was very large. The abeyance dated from 1375, that is, nearly 500 years. This was in Lord Palmerston's ministry.

3. A more recent case is that of *FitzWaryn.* Here the petitioning co-heirs were Lord Gage and Sir Bourchier Wrey, who, it may be suspected, was the moving spirit in the proceedings. It was necessary for Sir Bourchier Wrey, in order to succeed, to establish the illegitimacy of one Reginald Weld, who, if legitimate, would have displaced him from his representation. Sir Bourchier Wrey failed in this attempt and, as a result of the Committee's findings, the Barony must be taken to be in abeyance between Lord Gage and Mr. Weld and others. Neither of these gentlemen took any step, so far as is known, to have the Barony called out in his favour.

It should be noticed that in modern times there has sprung up the practice of what is familiarly called syndicate claims. Very many people who are possible co-heirs to a Barony are co-heirs to more than one. We find, therefore, cases where the principal claimant joins with several co-heirs to claim several Baronies, and then, in effect, the successful parties divide the spoil amongst themselves. In other cases, as for example, Stanley and Strange of Knokin, some of the co-heirs do not

join in the petition and are left out in the cold. To take this case, the Duke of Sutherland and the other co-heirs were in the dilemma that they must either spend money to assert a claim which could not be fruitful (since there were not enough peerages to go round all the nine possible claimants) and which, in any event, if successfully asserted by them, could not have been worth the expenditure, since they were already holders of dignities, or must stand by and see honours held by their ancestors appropriated for others who had no more legal or moral claim than themselves. The Duke of Sutherland and Lord Jersey addressed a letter to Lord Stamfordham setting out their views upon the subject, and it is understood that these views were regarded with sympathy in the quarters for which they were intended. But it is also understood that pledges had already been given in respect of Lady Loudoun and Lady St. Davids' claims which precluded any action being taken upon the Duke of Sutherland and Lord Jersey's letter.

As a further instance of the peculiarity (if not absurdity) produced by the present application of the law, particular attention may be given to the case of the Baronies of Burgh, Strabolgi, and Cobham.

Petitions were presented for these three Baronies by Colonel Leith, Mr. Kenworthy, and Mr. Alexander, each of whom claimed to be co-heir with the other petitioners and with other persons to each of these Baronies.

Passing over, for the sake of simplicity, the claim in Burgh and Cobham, Strabolgi deserves fuller notice.

The claim was founded upon an alleged summons of one David de Strabolgi, Earl of Atholl, to an alleged Parliament at York in 1318 followed by an alleged sitting of that Parliament. Very grave doubt arises as to whether the Assembly of 1318 was a Parliament in any real sense of the word, and, if it was, whether the Earl of Atholl was summoned to it, and, if he was, whether he sat in it. These doubts must, for the purposes of the discussion, be considered as set at rest by the decision of the Committee of Privileges.

David de Strabolgi, Earl of Atholl, was a Scotch refugee, who appears to have held at one time or another land in the County of Norfolk, but its tenure does not seem to have been in any way connected with his alleged summons. Thus the caput baroniæ has to be sought outside the realm of England. In any event, his direct male line died out in the third generation in the person of his grandson. The claimant in whose favour the Barony was eventually called out was the descendant in the 18th generation from this grandson of the alleged original grantee. During the 500 intervening years the line was traced no less than nine times through females. The claimant has no territorial connection with Strabolgi, which appears to be somewhere in Perthshire, and he appears to represent one-ninth, or, if a line whose extinction is not definitely proved is assumed to be extinct, one-sixth of the impartible hereditament which he claimed. Speaking not otherwise than respectfully of him, he had not at the time when the Barony was called out performed any such public service as entitled him to any mark of the Royal favour. There does not seem the smallest reason, except the fact that he possessed sufficient money to put forward the claim, why the Barony should have been conferred upon him rather than any one of the other representatives.

These observations are not directed to any suggestion that the Committee of Privileges can come to any conclusion other than that which they report to the House upon the facts laid before them. The law as stated in the beginning of this memorandum is well settled. It is, however, suggested that the time has arrived when the practice needs reconsideration.

In July, 1915, Mr. W. Paley Baildon wrote in the Law Quarterly Review:—

> "The barony in fee is as much a legal fiction as John Doe and Richard Roe, and has nothing like the antiquity of those worthies.

> . . . . The theory has been denounced and ridiculed by competent lawyers, historians and heralds. . . . Is not the time ripe for the application of the results of modern research . . . to this particular theory of the barony in fee? A new Report on the Dignity of a Peer might well adopt Lord Rededale's opinion that baronies by writ were not heritable before the time of Richard II, or might even go a step further, and, taking courage in both hands, denounce the whole doctrine as unsupported by and opposed to all historical evidence. No one would weep save the peerage-mongers."

But many years before Mr. Baildon's article, Lord Redesdale's Committee on the Dignity of a Peer had made prophetically a similar suggestion.

"When usage is supposed," they say, "to have first warranted this inference of law (that the issue of a writ, coupled with sitting conferred a hereditary right to sit) is a question which it may be fit for the House deliberately to consider; and to fix a point of time before which the evidence of issue of a writ and the sitting in Parliament under that writ shall not be deemed sufficient evidence of the creation of a hereditary dignity of peerage; otherwise claims will be made which have not been thought of for centuries."

As has been shown, the fear indicated in this sentence has been realised. Peerages have been called out of abeyance although the *caput baroniae* and all estates belonging to them have long been alienated and their very names have become unfamiliar—indeed in the case of Strabolgi, in a name probably never employed as that of a peerage dignity at all. Representatives of minute fractions of a hereditament have become through the possession of that minute fraction possessors of the whole. And in each case the person preferred has necessarily been given a precedence in the Barony before the representatives of noble houses in some cases still holding the estates of the original grantee, and in all possessing a title enjoyed consecutively perhaps for centuries.

Document No. 2.

ABEYANCE AND THE ROYAL PREROGATIVE.

The earliest authoritative pronouncement on Abeyance is to be found in the Report of the Earldom of Oxford Case (Collins p. 175, and see Cruise on Dignities, pp. 182-3). The House of Lords had remitted the case, which included claims to the Baronies of Bolebec, Sandford and Badlesmere, for the opinion of the Judges, and Crew, C. J. for himself and his brother J. J. reported as follows:—

> "As touching the Baronies of Bolebec, Sandford and Badlesmere their opinion was, that the same descended to the general heirs of John, the fourth Earl of Oxford, who had issue John the fifth Earl of Oxford and three daughters; one of them married to the Lord Latimer, another to Wingfield, and another to Knightley, which John the fifth Earl of Oxford, dying without issue, those baronies descended upon the daughters as his sisters and co-heirs; but these dignities being entire, and not dividable, they became incapable of the same, otherwise than by gift from the Crown; and they in strictness of law reverted to, and were in the disposition of King Henry VIII."

The House of Lords thereupon certified to the King that as for the baronies they were wholly in His Majesty's hands, to dispose of at his pleasure (Journals V. III, 552).

In the case of the Barony of Grey de Ruthyn (Collins p. 248) the heralds were instructed by the House of Lords to search the Records and to report what had been done in the following circumstances:—

"When a barony is to descend to two daughters, whether the same have been in His Majesty's disposal."

The heralds replied that there were divers precedents. In two cases the eldest daughter's issue male had the barony. In one case the youngest daughter's issue male had the barony. In six cases the King made no disposal of the barony.

The letters patent issued for the creation of the Barony of Lucas of Crudwell (which were confirmed by Act of Parliament 15, Charles II.) show clearly what was the legal view of the day qua abeyance:—

"that if there shall be more persons than one who shall be co-heirs of her body by the said Earl of Kent, whereby the King's Majesty his heirs or successors, might declare which of them he pleased to have and enjoy the same honour title and dignity or might hold the same in suspense or extinguish the same at his or their pleasure." (Lucas Peerage Claim 907. Minutes of Evidence). See also the patent terminating the Darcy Abeyance in 1641 (Complete Peerage Vol. IV, p. 735).

From the proceedings above cited certain definite facts emerge.

1. *A Barony by Writ is an Impartible Inheritance.*—That a sole heir, male or female, could succeed is without question because there would be no co-heirship, but where two or more daughters (or other co-heirs) appeared in the succession, they being equal in co-heirship, no one could succeed, and therefore if the King desired the barony to continue, he must nominate one of the co-heirs, who (or, if a woman, her husband or son) would thus be capable of fulfilling the duties and obligations of a holding per baroniam. This incapability of division did not, however, apply to the lands of the barony, as these were partible without affecting the fate of the peerage dignity. In the Oxford Case mentioned above, the resolution of the House of Lords that baronies were wholly in His Majesty's hands "to dispose of at His pleasure" must be read, in view of later declarations of the law, with the qualification that the disposal must be within the heirship of the barony, and consequently the barony in question could not be granted to a stranger in blood. The same qualification must be read into the Lucas patent. It is an accepted rule of peerage law that if all co-heirships but one die out, the survivor becomes entitled of right to the barony, because such a co-heir, thereupon sole heir, is capable of filling an impartible inheritance. (Barony of Willoughby de Broke 1694, on which occasion all the Barons were summoned to attend and the doctrine of emergence in general form is established, see H. L. Journals, 19th March, 1694). Had the Crown power to grant the barony to a stranger the falling of the heirship on a sole heir would be defeated. Moreover, in view of later declaartions of the law it is clear that the Crown has no power either to forfeit or to accept the surrender of any peerage of England inheritance. (Earldom of Norfolk Case 1907, A.C. 10).

2. *The Crown has Absolute Discretion, within the Limits of the Co-Heirship, to Choose which Co-Heir it Pleases.*—The earlier cases clearly establish this power of choice, and it has never been questioned subsequently. The present Rules of the House in regard to Peerage Claims clearly indicate that the Crown expects always to have proved, as far as possible, the pedigrees of all existing co-heirs. This is because it desires to survey the area of its choice and to ascertain the personal position and the individual fitness of its suppliants to hold a peerage honour. These rules have been established to meet changed conditions. Originally petitions to the Crown to terminate abeyance came only from children or grandchildren whose circumstances were well known to the Crown; the claims, however, of the last Century have frequently been in respect of

baronies abeyant for several hundred years, and often have been made by individuals holding no single acre of the original barony lands in respect of which their ancestor was summoned.

3. *The Crown need not Terminate an Abeyance.*—In other words, the barony may be left in suspense. The fact that a claimant has made out his claim to the satisfaction of the House of Lords does not, in an abeyance claim, mean that he has established his right to the barony, but simply that he has proved to the satisfaction of the House that the barony exists and that he is one of the co-heirs. The position of the Crown is equally clear from the reply of the heralds in the Grey de Ruthyn case, and refusal to terminate abeyance has occurred within the last hundred years. (Fitzwalter, 1844, and Wharton, 1845.) It is necessary to draw careful attention to this rule, since, within the last few years, as a result of the termination of abeyances in certain Baronies in favour of co-heirs, owning not an acre of the original lands of the barony, an enquiry was put to the then Prime Minister (Mr. Asquith) in the House of Commons as to the reasons for these terminations. Mr. Asquith replied that it was "An automatic process," but being pressed subsequently he admitted that these steps were taken by the Crown on the advice of Ministers. (See Complete Peerage, Vol. IV, p. 755, note (a7)). The process is, of course, automatic if the heirship has descended on a single heir, but such a claim is one of right as heir to the barony, and has nothing to do with the prerogative, and is not a claim to termination of abeyance with a seeking of the grace and favour of the Crown.

The law was clearly laid down in the year 1837 by Tindal, C. J., who, with his brother J. J. (to whom a case for opinion had been referred by the House of Lords), was present in the House, and delivered the opinion that:—

> "So nevertheless that the Crown, the Sovereign of honour and dignity, may at any time during abeyance determine it by conferring the dignity on whichever of the co-heirs it pleases, but if the Crown do not exercise such prerogative, and the heirs of all the co-heirs but one become extinct, then the abeyance is at an end, and such only surviving co-heir is entitled as a matter of right to the enjoyment of the dignity." (Camoys Case, 1836, 6 Cl, and Finn 789).

Recently it has become the practice for certain claimants who are co-heirs to more than one barony to attempt to gather all these baronies into one hand. It might be the wish of the Committee to investigate whether this procedure is altogether against the principle to which abeyance, together with the termination thereof, owes its origin.

Originally, when co-heirship appeared in the succession the Crown terminated the abeyance in favour of a co-heir (or the husband or son of a co-heir) who owned a considerable proportion of the original lands and was able, directly or indirectly, to fulfil all the required feudal obligations. That would appear to have been the reason for terminating the abeyance. The prerogative was certainly never exercised as a matter of course, and the number of cases in which nothing was done shows the exercise of a careful discretion.

Moreover, if one co-heir to several baronies succeeds in collecting all those baronies in his own hand, he cuts off the chances of all the other co-heirs being able to come forward in the future and claim the termination of abeyance in any one of the baronies concerned. The position is not quite the same where an abeyance is only recent, since there are in those cases as a rule only two or three co-heirs to be considered.

The note above prepared relates only to the abeyance of baronies. It has been argued that if a barony is capable of becoming abeyant, an earldom possesses the same quality, and all that refers to abeyance of baronies may equally be applied to earldoms, however ancient in origin. Recently claims were made by co-heirs to the Earldoms of Norfolk and of Oxford, but were rejected on grounds other than that of abeyance.

It is clear, however, that there has been no determination of an earldom abeyance during the last five centuries, if, indeed, earldoms have ever in our history been dealt with as abeyant in the sense that baronies have.

Document No. 2a.

(1) *Historical Origin of Baronies by Writ.*—According to the present legal doctrine a Barony by Writ is held to have been created whenever a person has been summoned to a Parliament, and has sat in Parliament in pursuance of that Summons. Such Parliament must have the essential characteristics of a modern Parliament, i.e., it must have been an Assembly of the three Estates of the Realm, and the model Parliament of 1295 in recent times has usually been regarded as the earliest Parliament for Peerage purposes. If a petitioner for a Barony in abeyance can prove that his or her ancestor was summoned and sat in such a Parliament, this supplies a good root of title, because it is held that an hereditary title was created, even in the earliest times, by sitting in Parliament in obedience to a Summons. As a matter of history this doctrine was only gradually developed, and it is doubtful whether the notion of an hereditary right being created by a Summons, and sitting in Parliament really came into existence before the Fifteenth Century. The object of this Memorandum is to show briefly how the doctrine of Barony by Writ arose.

Before 1215 the word "Parliamentum" would seem to be used somewhat indiscriminately to cover meetings of the Court and of the Council, but it is known that the Feudal Superior had a right to require the attendance of his tenants at his court, and the Norman Kings possessed and made use of this right. The attendance at Court was a duty and not a privilege, and was one of the services by which a tenant held his land.

In early Norman times the Court moved with the Sovereign, and probably only the great Officers of State and various important officials were in permanent attendance, but the Tenants-in-Chief of the Crown in the neighbourhood in which the Court happened to be were required to attend. As the tendency grew to summon Parliament more and more to London and Westminster the personnel of Parliament appears to have been affected, as those near London would be more likely to receive Summonses than those who lived at a great distance: the basis of Summons was still, however, tenure; and the Writ of Summons applied only to the particular assembly for which it was issued. We have very little knowledge of the period before Magna Carta, but it seems evident that the practice of summoning a certain number only of the tenants had come into existence by 1215.

And it was no doubt in consequence of this that it was provided in one of the Clauses of Magna Carta that a certain class of tenant known as *majores barones* should be summoned individually to Parliament, whenever it was proposed to impose taxation, and that the other tenants *in capite* of the Crown should be summoned by general writ to the Sheriff and bailiffs. The assembly, meeting in pursuance of this double summons (and of a summons to Bishops, &c.), constituted a Parliament: and the right to an individual summons would by then seem to be asserted and to have been acknowledged by the Crown. Though, however, this right was admitted, it was not very easy to enforce, for while the King was able to fine persons who disregarded the Summons, there was no machinery by which the tenant could compel the Crown to issue a Writ of Summons to him. The result was that the King could summon whom he pleased, and this fact, combined with the fact that attendance in Parliament was still regarded by many as a burden rather than a privilege, resulted in the right of the *majores barones*, whatever it amounted to, being much

weakened, and Summonses were frequently issued to individuals for a particular Parliament only and were not necessarily continued to their descendants even when those descendants occupied the same lands.

It would appear that up to the middle of the Fourteenth Century the idea that a Summons and a sitting in Parliament created an hereditary dignity did not exist, and it is only after Baronies by Patent have been for some time in existence that the idea of an hereditary dignity being constituted by a Writ takes shape. The development of the idea is principally due to the fact that where there has been a long succession of Summonses through several generations to members of one family in respect of the same lands, the idea comes about that there is an hereditary right to the Summons independent from tenure of land held, and the notion of an hereditary dignity, at any rate, when the succession is in the direct line, from father to son, is gradually evolved. Towards the end of the Fifteenth Century, something like a customary right of receiving a Writ of Summons appears to be recognised, though it is not yet a fixed rule of law, and the legal doctrine does not appear to be finally recognised till 1674 (the Clifton case). Cases in which there was no direct succession from father to son, but in which the heir was a female, came up several times during the Seventeenth Century, and a difficulty was often felt in deciding between the claims of the only daughter of the last holder of the title and a more distant heir male, especially if the latter happened to be in possession of the lands in respect of which the original Summons had been issued. The various decisions on cases of this description during the first half of the Seventeenth Century are set out in the Complete Peerage, Volume IV, pp. 704-5, and are inconsistent, but it was held in the Clifton case, 1674, that the heir general, i.e., the only daughter, though a woman was entitled to receive a Writ of Summons, and by this decision the doctrine was definitely established that a dignity quite separate from the land was created by a Writ of Summons followed by a sitting in Parliament.

(2) *Mode of Descent and Doctrine of Abeyance in Baronies by Writ:*—

(1) If there are any sons, eldest or only son succeeds.

(2) If there are no sons and only one daughter, the daughter succeeds as of right.

(3) If there are no sons and several daughters, the Barony falls into abeyance, and the Crown has the power to call it out in favour of any one of them, but, as appears from the Return annexed, this is purely a matter of discretion.

All co-heirs have equal rights, and there is no seniority among co-heirs. According to the theory of the law, the dignity being impartible, is not divided among the co-heirs; but it is convenient to refer to co-heirs as possessing a certain fraction. The fact, however, that one co-heir represents a larger fraction than another does not strengthen his or her position.

When all other lines of co-heirs can be proved to be extinct, the representative of the only surviving line is entitled to the dignity as of right. This is known as the Doctrine of Emergence from Abeyance.

(4) The practice of the Crown as regards calling Baronies out of abeyance (*vide* Return):—

(i) In some cases Crown has refused to take action at all.

(ii) While senior co-heir is usually preferred, there are several examples of junior co-heirs being favoured.

(iii) The fact that other co-heirs oppose or themselves petition for the dignity does not prevent the termination of the abeyance in favour of a particular co-heir.

Document No. 3.

HOME OFFICE MEMORANDUM ON PEERAGES IN ABEYANCE.

The Home Office records contain little information with respect to the practice followed in calling peerages out of abeyance, or the principle on which that practice is or ought to be based. This is because the Home Secretary's duties in this connection are purely ministerial in character. They are of two kinds:—

(1) Petitions from persons who claim to be co-heirs to a Barony in abeyance and ask to have the abeyance determined in their favour are presented to the King through the Home Secretary. This is in obedience to the ordinary constitutional practice by which all petitions which do not specifically relate to the work of some other Department of State are submitted to the Sovereign by the Home Secretary.

When a petition of this kind is received in the Home Office, Garter is informally consulted. As an expert in genealogy he is able to assist Home Office with an opinion as to whether the applicant makes out a *primâ facie* case for his claim to be a co-heir, and whether any other lines of co-heirs are known to exist, and he sometimes calls attention to defects in the petition which the claimant might be asked to remedy. After receiving Garter's observations, the Secretary of State formally refers the petition to the Attorney-General: this is done by making an endorsement on the petition in the following form, which is signed by the Secretary of State:—

> "His Majesty is pleased to refer this Petition to Mr. Attorney-General to consider thereof, and to report his opinion what may properly be done thereon, whereupon His Majesty's further pleasure will be declared."

A fee of £2 2*s*. is paid by the petitioner in respect of this reference.

The Attorney-General, after considering the petition and the evidence produced in support of it and—if he thinks it necessary—hearing the petitioner's counsel, submits through the Secretary of State his report to His Majesty on the petition, and the Secretary of State lays it before the King with a recommendation in accordance with the Attorney-General's conclusions.

If the report should be adverse to the petitioner's claim he is informed that the Secretary of State, having received from the Attorney-General a report upon the petition, sees no grounds for advising His Majesty to entertain the prayer of the petition or to justify him in referring it to the House of Lords. If the Attorney-General reports that in his opinion the petition should be referred to the House of Lords, an endorsement in the following form is made on the petition and signed by the Secretary of State:—

> "His Majesty being moved upon this Petition is graciously pleased to refer the same to the Right Honourable the House of Peers to examine the allegations thereof as to what relates to the Petitioner's title therein mentioned, and to inform His Majesty how the same shall appear to Their Lordships."

The petition, with the Attorney-General's report, is then forwarded to the Clerk of the Crown, and a reference fee of £2 2*s*. 6*d*. is charged to the petitioner.

The Home Secretary is then *functus officio* so far as the petition is concerned. The finding of the Committee of Privileges is not

N.B.—In cases in which the claim is so clear that the Attorney-General considers it unnecessary that the matter shall go to the Committee for Privileges, he has so reported to the Crown, e.g. Beaumont, 1895.

reported to His Majesty through the Home Office, and is officially no concern of the Home Secretary's, although unofficially a copy of the report is sent to him as a matter of courtesy. The duty of advising the King as to the action to be taken if the finding of the Committee is favourable to the claimant rests with the Prime Minister.

(2) When it has been decided to call a barony out of abeyance in favour of one of the co-heirs, the Prime Minister informs the Secretary of State of the King's decision and requests him to take the necessary steps to give effect to His Majesty's commands. This is precisely the same procedure as when a new peerage is created. On receipt of the Prime Minister's notification the Home Secretary drafts with the assistance of Garter a warrant directing the issue of a Writ of Summons (in the case of a peeress a Patent), submits it for the King's signature, and forwards it to the Lord Chancellor. This action is, of course, purely formal.

It has been stated above that the duty of advising the King in the matter of terminating an abeyance is vested in the Prime Minister. The resolution of the House of Lords confirming the finding of the Committee of Privileges is forwarded by the Clerk of the Parliaments to the Lord Chamberlain. He lays it before the King as one of the Lords with White Staves, and forwards it to the Prime Minister "for such advice as he may wish to tender to His Majesty." Officially the Home Secretary is not concerned in the matter at this stage; his only function is to take the formal action necessary to carry out the decision when it has been arrived at. Naturally, therefore, the Home Office papers contain little information as to the practice of successive Prime Ministers in dealing with abeyances or the principles underlying such practice. It should, however, be added that the Secretary of State has not infrequently been informally consulted by the Prime Minister before he came to any decision, and that of late years the tendency has been for such informal consultations to become more frequent. They have usually been in regard to individual cases, and for this reason, as well as from their unofficial nature, there is little or no information of general importance to be derived from them. There is one case, however, in which the Prime Minister's Private Secretary consulted the Home Office unofficially with a view to endeavouring to lay down some general principles for dealing with abeyances, and after considering the question the Secretary of State attempted to advise, and the following note (prepared in the early part of 1914) was sent to the Prime Minister in 1915:—

"In connection with a number of peerage claims which are now in progress Mr. Drummond raised the question whether any principles can be laid down to guide the Prime Minister in advising the Crown to call a Barony out of abeyance in favour of a particular claimant. An examination of the precedents does not disclose the existence of any consistent rule by which such questions have been decided in the past.

Mr. Drummond suggested three possible courses:—

(1) Where there are two or more co-heirs and they select one of themselves by agreement, the barony should go to the person agreed upon.

(2) The barony should continue in abeyance until it vests in one individual by the failure of other co-heirs.

(3) The barony should go to the co-heir who represents the senior line of descent.

The question is not one on which the Home Office is specially qualified to advise nor could the Secretary of State express any decided opinion, but at Mr. Drummond's request the matter has been considered.

The Secretary of State is disposed to agree to the first of the suggested rules provided that the co-heirs selected by agreement is in other respects well qualified for the dignity. Any such agreement would have to be carefully scrutinized to ensure that the consents were bona fide and not given for consideration.

As regards the second rule (i.e. (3) above), however, it seems doubtful whether when a barony has been long in abeyance and there are a number of co-heirs, the barony should be called out of abeyance at all except in special circumstances. The sentimental feeling as to the virtual extinction of an old barony does not seem to have much force in cases where it has already been in abeyance for a long period of years; nor does the fact of a great deal of money having been spent in hunting up pedigrees and fighting a case before the Committee of Privileges seem to constitute a sufficient ground for reviving a barony in such cases. The difficulty of making a selection between the different co-heirs also seems a strong reason against revival except in special circumstances. None of the co-heirs has any more claim than any other, and seniority by itself does not seem a sufficient ground. As the disposal of these baronies is entirely in the King's discretion, to lay down any principle of selection by seniority would be to alter the present law in favour of the senior co-heir and might give rise to embarrassment in particular cases. It seems rather a question whether these cases of long abeyance and a number of co-heirs should not be governed by the same sort of considerations as govern the creation of new peerages—that is, there should be special grounds of public services, etc., which would justify the Sovereign in terminating an abeyance in favour of one co-heir as against the others.

To sum up, the Home Office is not in favour of encouraging claims for the termination of baronies in abeyance, which often involve large expenditure in establishing pedigrees; especially where the abeyance has lasted for centuries. Exception might be made on the ground of public services or where there is agreement among the co-heirs and the co-heir selected is well qualified."

But the matter naturally dropped out of sight during the war, and as far as the Home Office is aware, these suggestions were not carried out.

Document No. 4.

RETURN (ADDITIONAL) OF PEERAGES CALLED OUT OF ABEYANCE AND THE DATES WHEN THEY WERE SO CALLED OUT FROM THE YEAR 1600 TO THE PRESENT TIME.

To be inserted at end of Part I of House of Lords Return (pursuant to the Order of 22nd March, 1923).

—	Fell into Abeyance.	When Called out of Abeyance.	Number of Years in Abeyance.	Name of Barony, Remarks, etc.
41A	1497	1923	426	CROMWELL. *Creation.* The Barony fell into abeyance on the death of Maud, *suo jure* Baroness Cromwell, in 1497. In 1922 the House of Lords reported that the Barony was in abeyance, and that the Petitioner, Selina Frances Bewicke-Copley, was a co-heir, the other co-heirs being The Duke of Abercorn, Charles John Peebles Chaplin, Mrs. Amabel Jemima Somers-Cocks, and the heir or heirs, if any, of Dame Elizabeth Savile. There was no opposition on the part of the other co-heirs. The Petitioner Lady Bewicke-Copley died 27th June, 1923, and her eldest son, Robert Godfrey Wolseley Bewicke-Copley, petitioned for the termination of the abeyance in his favour, and was summoned to Parliament as Lord Cromwell by writ dated 10th July, 1923.
41B	1756	1924	158	FITZWALTER. (*See also* Part II, No. 43.) The Petitioner, H. Fitzwalter Plumptre, was the great nephew of Sir B. W. Bridges, Bart., who was reported by the House of Lords to be a co-heir in 1844 (though no action was taken by the Crown as a result of the Report), and represented the line of co-heirs which was represented by his great uncle in 1844. The House adopted the same form of Resolution as in 1844, viz. "That the Barony was in abeyance between the Petitioner and the heir or heirs (if any) of Jemima Duke. The Petitioner, H. Fitzwalter Plumptre, was summoned to Parliament as Lord Fitzwalter by writ dated 9th October, 1924.

To be inserted at beginning of Part II of Return.

—	Fell into Abeyance.	Date of Resolution of the House of Lords.	Duration of Abeyance at date of Resolution of the House of Lords.	Name of Barony, Remarks, etc.
41c	1507	1798	291	BEAUMONT. (*See also* Part I, Nos. 22, 130.) The Barony fell into abeyance on the death of William Viscount Beaumont in 1507. The Petitioner, Thomas Stapleton, was reported by the House of Lords to be a co-heir in 1798, but no action was taken by the Crown on the Resolution of the House. The Petitioner was senior co-heir, and the only other co-heir, The Earl of Abingdon, did not oppose. The Barony was subsequently out of abeyance in 1840 in favour of the Petitioner's grand-nephew, Miles Thomas Stapleton.

Document No. 5.

RETURN OF BARONIES, CREATION OF WHICH CAN BE ESTABLISHED BY WRIT AND SITTING.

Giving: (1) Date of creation.
(2) Date of falling into abeyance or becoming extinct.
(3) Probable Co-heirs.

Name of Barony.	Date of Creation.	Date of Abeyance or Extinction.	General Remarks. (Extracted from Dod's Peerage for 1923.)
Audley	1313	Abeyance, 1872	Co-heirs: Hon. Mary Thicknesse Touchet; Hon. Emily Thicknesse Touchet.
Badlesmere	1309	Abeyance, 1339	Co-heirs: Marquis de Casteja; Earl of Essex; Lord de Ros; heirs (prior to 1913) to Barony of Latimer; the heir of Elizabeth, wife of Sir Anthony Wingfield, K.G., living 1526; H.M. the King; or possibly the Princess Mary of Bavaria; the heir of Henry James Jones, *de jure* Lord Scrope, of Bolton, living 1848; the heir of Millicent, wife of Powlett Thompson or Scrope, living 1821; the Earl of Lovelace.
Bardolf	1299	Abeyance in 15th Century	(Subject to attainder.)
Basset of Sapcote	1371	Abeyance, 1378	Co-heirs: The Earl of Abingdon; Baroness Beaumont; Hon. Ivy Stapleton. Co-heirs: The heir of Vincent Peyton; the heir of Anne, wife of Godfrey Clarke of Chilcote, co. Derby (m. 1738); the heir of Mary (*nee* Pole), m. 1st Thomas Powys, of Berwick; 2nd, Sir Rowland Hill (no issue); 3rd, J. Foster Barham; Baroness Zouche; Lady Somerset; the heir of Mary (b. 1701), wife of Samuel Long; the heir of Mary, wife of Thomas Leighton, living *circa* 1625; Mrs. Mary Gertrude Walker; Miss Eveline Cornwall Legh; Miss Frances Cornwall Legh; the Earl of Bradford; the heirs of Sir John Zouche, of Codnor.
Beauchamp of Bletso ...	1363	Abeyance, 1836	(Subject of claim now pending.) Co-heirs: The Duke of Richmond and Gordon; Mrs. Gilbert Spencer-Smith, of Maidenstone, Burlesdon, Hants; Susan, widow of Sir Wilbraham Lennox, K.C.B.; the Duke of Manchester; Hon. James Richard Nevile Stopford; Hon. Mrs. Joynes; the Earl of St. Germans; Alexander George Gordon Ross; Algernon Wriothesley Russell.
Berkeley	1295	Abeyance, 15th Century...	Co-heirs: The heir of Margaret, second wife of John Talbot, Earl of Shrewsbury: who are probably Lord Mowbray and Stourton; Lady Furnival; Lord Petre; Marquis de Casteja; Earl of Essex; Lord de Ros; and the heirs (prior to 1913) to Barony of Latimer (1431).

Bonville	1449	Abeyance, 1554	(Subject to forfeiture). Co-heirs: Baroness Kinloss; Caroline Adelaide Hadaway; Alice Eva Hadaway; Lady Caroline Temple-Nugent-Brydges-Chandos-Greville.
Bourchier	1348	Abeyance, 1646	(Subject of claim now pending). Co-heirs: The Baroness Kinloss; Caroline Adelaide Hadaway; Alice Eva Hadaway; Lady Caroline Grenville; Charles Vere Townshend Mainwaring-Ellerker-Onslow (who presented a Petition in 1912); Henry Ferrers Ferrers; Major Charles Archibald Townshend Boultbee.
Burghersh	1303	Abeyance, 1449	Co-heirs: Viscount Falmouth; Earl of Loudoun; Lord Grey de Ruthyn; Hyacinth Edward Bodenham Lubienski; May Flora Kirwan; Earl of Romney.
Burnell...	1311	Abeyance, 1420	Co-heirs: Lord Fitzwalter; Sir Percy Dixwell-Oxenden, Bt.; the Duke of Manchester. (It is arguable that the patent creating Edmund Dunch, Baron Burnell, determined the abeyance, in which case the Barony is now in abeyance between the two last-mentioned co-heirs only.)
Butler	1679	Abeyance, on death of E. Cowper in 1905 ...	This Barony is now in abeyance between Baroness Dingwall and Lucas; Lady Desborough and the heirs of Lady Amabel Kerr.
Cherleton	1313	Abeyance, 1420	Co-heirs: Edward Pemberton Salusbury; co-heirs of the Rev. Charles Leicester; Rev. Richard H. Cholmondeley; Sir Peter Leicester; W. S. Childe Pemberton.
Clifford	1628	Abeyance, 1858	Co-heirs: Earl of Carlisle; Earl Granville.
Coleville	1331	Became extinct, 1369.	
Compton	1572	Abeyance, 1855	(Subject of claim now pending.) Co-heirs: Charles Vere Townshend Mainwaring-Ellerker-Onslow; Henry Ferrers Ferrers; Major Charles Archibald Townshend Boultbee. A Petition was presented by the first-named in 1912.
Dacre of Gillesland	1459	Abeyance, 1569	Co-heirs: Lord Mowbray and Stourton; Lady Furnivall; the Earl of Carlisle.
Ferrers of Chartley	1299	Abeyance, 1855	(Subject to claim now pending). Co-heirs: Charles Vere Townshend Mainwaring-Ellerker-Onslow; Henry Ferrers Ferrers; Major Charles Archibald Townshend Boultbee. Petitions have been presented (1912) by the two first-named, and have been referred (1914) to the House of Lords.
Ferrers of Groby	1300	Abeyance, 1554	(Subject to forfeiture). Co-heirs: Identical with those of Bonville.
Fitzhugh	1321	Abeyance, 1512	Co-heirs: Viscount Hampden; the Marquess of Bute.
Fitzpayne	1299	Abeyance, 1450	Co-heirs: Lord Arundell of Wardour; Lord Clifford of Chudleigh; Lord Mowbray and Stourton.
Fitzwaryn	1455	Abeyance, 1637	House of Lords reported in 1914 that Barony was in abeyance, and that co-heirs were Viscount Gage, Colonel H. Montgomery Campbell, the heir, if any, of Mary Mackworth and Reginald Joseph Wild: but no action was taken by the Crown to terminate the abeyance.

Name of Barony.	Date of Creation.	Date of Abeyance or Extinction.	General Remarks. (Extracted from Dod's Peerage for 1923.)
Fitzwilliam	1295	Abeyance, 1569	Co-heirs : Lord Mowbray and Stourton ; Lady Furnivall ; the Earl of Carlisle.
Graunson or Grandison ...	1299	Abeyance, 1375	House of Lords reported in 1858 that Barony was in abeyance and that Sir H. Bedingfield, who had petitioned for termination of abeyance was a co-heir, but no action was taken by the Crown. Present co-heirs are Duke of Richmond ; Mrs. Gilbert Spencer Smith ; Susan, Lady Lennox : the Duke of Manchester ; Hon. J. R. Neville Stopford ; Hon. Mrs. Joynes ; Earl of St. Germans : Alexander George Gordon Ross ; Algernon Wriothesley Russell ; Sir Henry Bedingfield, Bt. ; the heir of Dame Elizabeth Strangways ; the Countess of Yarborough ; the Countess of Powis ; the heir of Dame Alice Wake ; the Earl of Loudoun ; Lord Grey de Ruthyn ; Hyacinth Bodenham-Lubienski ; May Florence Kirwan ; the Earl of Romney ; F. L. F. William Lowndes ; Col. William Selby-Lowndes ; Sir Anchitel Ashburnham-Clement, Bt.
Grey of Codnor	1299	Abeyance, 1496	Co-heirs : Baroness Zouche ; Lady Somerset ; the heir of Mary, wife of Samuel Long ; the heir of Mary, wife of Thomas Leighton ; Mrs. Mary Gertrude Walker ; Miss Eveline Cornwall Legh ; Miss Frances Cornwall Legh ; the Earl of Bradford ; the heir of Sir John Zouche, of Codnor.
Grey of Wilton	1295	Abeyance, 1614	Co-heirs (subject to forfeiture) are Lord Wharton ; the Duke of Westminster.
Greystock	1295	Abeyance, 1569	Co-heirs : Lord Mowbray and Stourton ; Lady Furnivall ; the Earl of Carlisle.
Harington	1324	Abeyance, 1554	Co-heirs (subject to Attainder of Henry, Duke of Suffolk in 1554) are Baroness Kinloss ; Caroline Adelaide Hadaway ; Lady Caroline Grenville.
Hastings de Hungerford ...	1461	Abeyance, 1868	Co-heirs : Countess of Loudoun ; Viscountess St. Davids ; Lady Flora Hastings ; C. M. J. Bodenham-Lubienski ; the Earl of Romney.
Hylton	1295	Abeyance, 1746	Co-heirs : Mrs. Custance ; Dudley John North ; Sir Hylton Ralph Brisco, Bart.
Kyme	1295	Abeyance, 1338	The heir of Eleanor, wife of Henry Talboys, living *circa* 1400.
Martin	1295	Abeyance, 1326	House of Lords reported in 1914 that Barony was in abeyance and that co-heirs were Viscount Gage, Colonel H. Montgomery Campbell, the heir, if any, of Mary Mackworth and Reginald Joseph Weld : but no action was taken by the Crown to terminate the abeyance.
Mauley	1295	Abeyance, 1415	Co-heirs : Dorothy Bigot, by her husband, Roger Radcliffe ; Lord de Mauley.
Mauny	1347	Probably extinct, 1389.	

*Montagu	1299	Abeyance, 1541	Co-heirs: (subject to Attainder) Earl of Loudoun; Lord Grey de Ruthyn Hyacinth Bodenham-Lubienski; May Florence Kirwan; the Earl of Romney; William Lowndes of Chesham; Col. William Selby-Lowndes.
Mordaunt	1529	Abeyance, 1836	Co-heirs: Duke of Richmond and Gordon; Mrs. Gilbert Spencer-Smith; Susan, Lady Lennox; The Duke of Manchester; Hon. James R. Neville Stopford; Hon. Mrs. Joynes; Earl of St. Germans; Alexander George Gordon Ross; Thomas Wentworth Russell.
Montacute	1357	Abeyance, 1541	Co-heirs: (subject to Attainder). Identical with those of Montagu (above).
Montagu	1461	Abeyance, 1471	(Subject to Attainder). Co-heirs: Identical with those of Montagu (above).
Montalt	1295	Extinct, 1297.	
Monteagle	1514	Abeyance, 1686	Co-heirs: Identical with those of Morley.
Montherмer	1309	Abeyance, 1541	(Subject to Attainder). Co-heirs: Earl of Loudoun; Lord Grey de Ruthyn; Hyacinth Bodenham-Lubienski; May Florence Kirwan; the Earl of Romney; William Lowndes of Chesham; Col. William Selby-Lowndes.
Morley	1299	Abeyance, 1686	It is not certain whether all the remaining lines are extinct, but they are believed to be so, and that the co-heirs are Hon. Mrs. Oldfield; the Duke of Leeds; Hon. Blanche Caroline Pitt-Rivers: the heir of Hon. Mrs. Eliot; Hon. Mrs. Page-Roberts; Hon. Gertrude Emily Pitt-Rivers; George Lane-Fox.
Mortimer of Chirk	1299	Abeyance in 14th Century.	
Nevill	1295 }	Abeyance, 1601	(Subject to forfeiture).
Nevill	1459 }		
Ogle	1461	Abeyance, 1691	Co-heirs: Lord Howard de Walden; Lord de Clifford; Hugh Sidney Marsham-Townshend; the Earl of Albemarle; the Marquess of Salisbury; John Henry Leveson-Gower, of Bell Hill; the heir of Isabella, wife of 3rd Earl of Egmont; the heir of Arabella, wife of Jonathan Cope, of Brewerne Abbey; R. C. Duncombe Shafto, of Whitworth Park.
Percy	1299	Abeyance, 1572	(Subject to Attainder).
Rither	1299	Abeyance, ? 1342.	
Ros	1332	Probably extinct, 1338.	
St. Amand	1313	(Abeyance, 1402, det. 1416) probably extinct, 1500.	Presumably the co-heirs would be found amongst the descendants of Isabella St. Amand, living about 1330, by her first husband, Richard Handlo, or her second husband, Robert de Ildesle.
St. Maur	1313	Abeyance, 1625	Co-heirs: Baroness Zouche; Lady Somerset; the heir of Mary, wife of Samuel Long; the heir of Mary, wife of Thomas Leighton, living *circa* 1625.

* Another Montagu Barony, described as Pole of Montagu, has been claimed on strength of Summonses to Henry Pole, eldest son of Margaret; Countess of Salisbury from 1529 to 1536, and sittings thereunder. If this is a separate Peerage, Abeyance (subject to Attainder) dates from 1539, and the Co-heirs are same as in Montagu, Montacute and Monthermer.

Name of Barony.	Date of Creation.	Date of Abeyance or Extinction.	General Remarks. (Extracted from Dod's Peerage for 1923.)
Sandys of the Vine	1523	Abeyance, 1684	Co-heirs: The heir of Christopher Davies of Buryan, Cornwall (living 1750); the heir of Henry Savage (living 1683); the heir of Elizabeth Sheppard (living 1717); the heir of Lt.-Col. Robert Sandys Mill (d. 1766); the heir of Jane Coleman (living 1687).
Scrope of Bolton	1371	Probably in abeyance ...	Heir: The heir of Henry James Jones, living 1848.
Scrope of Masham	1350	Abeyance, 1517	Co-heirs: The heirs of Dame Alice Strangeways; the heir of Dame Margaret Danby; the heir of Dame Elizabeth Fitz Randolph.
Somery	1308	Probably extinct, 1321.	
Stafford	1299 / 1371	Abeyance, 1521	Heir (subject to Attainder) is Lord Stafford.
Stafford (Richard)	1371	Abeyance in 15th Century	Co heirs: Heir or heirs of Maud, wife of Sir Thomas Stanley.
Sudeloy	1299	Abeyance, 1473	Co-heirs: Heirs of Sir John Norbury; Heirs of Sir William Belknap.
Talbot	1331	Abeyance, 1616	Co-heirs: Lord Mowbray and Stourton; Lady Furnivall.
Teyes	1299	Probably extinct, 1324 ...	
Umfraville	1295	Abeyance? 1421	This is said to be in abeyance between four daughters of last *de jure* Earl of Angus one of whom is represented by Mrs. Askew Robertson; Lady Ingilby; and Mrs. Lewis Eyre. The representation of the other daughters, if they left issue, is unknown.
Verdon	1332	Abeyance, about 1346 ...	Co-heirs: Lord Mowbray and Stourton; Lady Furnivall; Viscount Falmouth; Baroness Kinloss; Caroline Adelaide Hadaway; Alice Eva Hadaway; Lady Caroline Grenville.
Wake	1295	Abeyance, 1408	Identical with those of Woodstock (below).
Welles	1299	Abeyance in 15th Century	Co-heirs: heir of Bethell Walrond; Earl of Ancaster; Marquess of Lincolnshire; Marquess of Cholmondeley; Matthew Henry Lister; heir of John Denton; heir of Margaret Berkeley.
Williams	1554	If this is a Barony by writ, which is doubtful, it fell into abeyance 1559. If by patent, it is extinct.	Co-heirs (if this is barony by writ) are: heir of Frances Samwill: heir of Dame Penelope Care; heir of Catherine Verney Lady Willoughby de Broke; Wenman Aubrey Wykeham-Musgrave; Earl of Abingdon.

Woodstock	1320	Abeyance, 1408		Co-heirs: (?) Princess Mary of Bavaria; and in another (the next line); Baroness Kinloss; Caroline Adelaide Hadaway; Alice Eva Hadaway; Lady Caroline Grenville; the heir of Anne, wife of Grey Brydges, 5th Lord Chandos; the Earl of Jersey; the Duke of Sutherland; Earl of Loudoun; Lord Grey de Ruthyn; Hyacinth Bodenham-Lubienski; May Florence Kirwan; Earl of Romney; Earl of Loudoun; Lord Grey de Ruthyn; the heir of William Lowndes, of Chesham (d. 1905); Col William Selby-Lowndes of Whaddon; the heir of Margaret Neville, wife of Nicholas Pudsey; Mrs. Askew-Robertson; Lady Ingilby; Mrs. Margaret Frances Eyre; the heir of Ursula, wife of Robert Widdrington.
Zouche, of Mortimer ...	1323	Abeyance, 1406		Co-heirs: Heir of Joyce, wife of Hugh Stanley; Duke of Beaufort.

Document No. 6.

RETURN OF PERSONS AT PRESENT IN POSSESSION OF BARONIES BY WRIT.

(1) *The following Peers hold Baronies by Writ as their principal or only Peerage.*

Lord Mowbray (also Lord Segrave).
Lord Hastings.
Lord Fitzwalter.
Lord De Clifford.
Lord Clinton.
Lord Cobham.
Lord Strabolgi.
Lord Grey de Ruthyn.
Lord Cromwell.
Lord Camoys.
Lord Latymer.
Lord Dudley.
Lord Berners.
Lord Willoughby de Broke.
Lord Vaux of Harrowden.
Lord Burgh.
Lord Braye.
Lord Wharton.
Lord North.
Lord Howard de Walden.
Lord Saye and Sele.

(2) *The following Peers of higher rank hold Baronies by Writ as inferior titles.*

The Duke of Norfolk	Barony of Maltravers.
The Duke of Beaufort ...	Barony of Botetourt.
The Duke of Atholl	Barony of Strange and Percy.
The Earl of Ancaster	Barony of Willoughby D'Eresby.
Viscount Falmouth	Barony of Le Despenser.
Viscount Hampden	Barony of Dacre (of the North).
The Earl of Plymouth... ...	Barony of Windsor.

(3) *The following ladies hold Baronies by Writ in their own right.*

Countess of Loudoun	Baronies of Botreaux, Stanley and Hastings.
Viscountess St. Davids ...	Baronies of Strange of Knockin, Hungerford and De Moleyns.
Countess of Dartrey	Barony of Ros.
Countess of Powis	Barony of Darcy de Knayth.
Countess of Yarborough ...	Baronies of Conyers and Fauconberg.
Lady Beaumont	Barony of Beaumont.
Lady Furnivall	Barony of Furnivall.
Lady Zouche	Barony of Zouche.
Lady Berkeley	Barony of Berkeley.
Lady Wentworth	Barony of Wentworth.
Lady Clifton	Barony of Clifton.

Document No. 7.

BARONIES IN RESPECT OF WHICH DIFFICULTY OF PROOF OF SITTING MIGHT ARISE.

Aldeburgh, 1371.
Ap Adam, 1299.
Astley, 1295.
Aton, 1371.
Audley, 1317.
Audley of Stratton, 1321.

Balliol, 1300.
Basset of Weldon, 1299.
Bavent, 1313.
Beauchamp de Somerset, 1299.
Beke, 1295.
Bohun, 1363.
Bradeston, 1347.
Braose (or Brewes), 1348.
Brun or Bruyn, 1313.

Bryan or Briene, 1350.
Bulmer, 1344.
Burgh, 1327.

Canville, 1295.
Cauntelo, 1299.
Chaundos, 1337.
Chaworth or Chaurces, 1299.
Clavering (or FitzRoger), 1295.
Clifton, 1376.
Cobham of Rundale, 1326.
Cobham of Sterborough, 1347.

Dagworth, 1347.
Damory, 1317.
Damory, 1326.
Daubeney, 1295.
Deincourt, 1299.
Deverose, 1384.
*Dinham or Dynaunt, 1295.

Engaine, 1299.
Erdington, 1336.
Everingham, 1309.

Felton, 1313.
FitzBernard, 1313.
FitzHenry, 1309.
FitzJohn, 1295.
FitzReynold, 1299.
Foliot, 1295.
Frene, 1336.

Gaunt, 1295.
Geneville, 1299.
Grelle, 1308.
Gynes, 1295.
Giffard, 1295.
Gorges, 1309.
Graunson or Grandison, 1299.
Grey of Rotherfield, 1338.
Grey of Sandiacre.

Hache, 1299.
Hastang, 1311.
Hastings, 1299.
Hausted, 1333.
Havering, 1299.
Heron, 1371.
Heron, 1393.
Holand, 1314.
Holand, 1353.
Huntercombe, 1295.
Huntingfield, 1351.
Huntingfield, 1362.
Hussey, 1295.
Hussey, 1348.

Ingham, 1328.

Kerdeston, 1332.
Kirketon, 1362.
Knoville, 1295.
Kyme, 1295.

Lansladron, 1299.
Lascelles, 1295.
Latimer, 1299, of Braybrooke.
Latimer, 1299, of Corby.
Layburn, 1299.
Layburn, 1377.
Lisle, 1299.
Lisle, 1311.
Lovell, 1299.
Lovel, 1348.
Lucy, 1265.
Lucy, 1320.
Lumley, 1384, of Co. Durham and Co. York.
Luttrell, 1295, of Co. Linc. and Co. York.

Manners, 1309.
Mare, 1299.
Marmion, 1264.
Marmion, 1313.
Marshal, 1309.
Meinill, 1295.
Meinill, 1336.
Moels, 1299.
Mohun, 1299.
Montagu, 1342.
Montagu, 1461.
Montalt, 1299.
Monteagle, 1514.
Montfort, 1296.
Monthermer, 1337.
Morley, 1299.
Mortimer, 1296.
Mortimer, 1299, of Richard's Castle.
Morvill, 1319.
Multon, 1299.
Multon, 1307.
Muncy, 1299.
Musgrave, 1350.

Neville, 1311.
Northwode, 1313.
Norwich, 1362.

Orreby, 1309.
Orti, 1299.

Paynell, 1299.
Paynell, 1303.
Paynell, 1317.

* In this case there is a sitting, but co-heirs are not descended from persons who sat and claim was disallowed by Committee for Privileges.

Peche, 1299.
Peche, 1321.
Peche, 1321.
Peyvre, 1299.
Pinkeney, 1299.
Pipard, 1299.
Plaiz, 1297.
Plaiz, 1317.
Plessis, 1299.
Plugenet, 1295.
Pole, 1366.
Pointz, 1295.
Poynings, 1337.
Poynings, 1368.

Rivers, 1299.
Roche, 1299.
Ros of Wearke, 1295.
Rye.

St. John of Basing, 1299.
St. John de Lageham, 1299.
St. Amand, 1299.
St. Maur, 1313.
St. Maur, 1317.
St. Philibert, 1299.
Sampson, 1299.
Say, 1313.
*Scales, 1299.
Segrave of Barton Segrave, 1295.
Stafford, 1411.
Stafford, 1461.
Stapleton, 1313.
Strange of Ellesmere, 1295.
Strange of Blackmere, 1309.
Strivelyn, 1342.
Sutton, 1324.
Swillington, 1326.
Swinnerton, 1337.

Tailboys, 1529.
Tateshull, 1295.
Teyes, 1299.
Thorpe, 1309.
Thorpe, 1381.
Thweng, 1308.
Tiptoft, 1308.
Toni, 1299.
Touchet, 1299.
Tregoz, 1299.
Tregoz, 1305.

Ufford, 1309.
Ufford, 1360.
Ughtred, 1343.
Uvedale, 1332.

Veer, 1299.
Vavasour, 1299.
Verdon, 1295.
Verdon, 1332.
Vesci, 1295.
Vesci, 1313.

Wake, 1295.
Waleys, 1321.
Ward, 1299.
Waterville, 1326.
Welles, 1299.
Welles, 1482.
West, 1402.
Willington, 1329.
Woodstock, 1320.

Zouche of Ashby, 1399.

* In this case there was a sitting, but co-heirs were not descended from persons who sat, and claim did not succeed.

Document No. 8.

APPENDIX A.

List of Baronies in Abeyance.

Name of Barony.	Date of Creation.	Date of Abeyance.	If under Attainder.
Audley	1313	1872	No.
Badlesmere	1309	1338	No.
Bardolf	1295	1404	Yes.
Basset of Drayton	1295	1390	No.
Basset of Sapcote	1295	1378	No.
Bonvile	1449	1554	Yes.
Bourchier	1342	1646	No.
Braose of Gower	1299	1326	No.
Burghersh	1330	1461	No.
Burnell	1350	1420	No.
Cherleton	1313	1422	No.
Compton	1572	1855	No.
Dacre of the North	1459	1569	No.

APPENDIX A—*cont.*

LIST OF BARONIES IN ABEYANCE—*cont.*

Name of Barony.	Date of Creation.	Date of Abeyance.	If under Attainder.
De la Pole	1366	1513	Yes.
Ferrers of Wemme	1375	1410	No.
Fitz Hugh	1321	1512	No.
Fitz Warine	1295	1636	No.
Grandison	1299	1375	No.
Grey of Codnor	1299	1496	No.
Grey de Wilton	1295	1614	Yes.
Greystock	1295	1569	No.
Harington	1324	1554	Yes.
Howard	1470	1777	No.
Kyme	1295	? 1560	No.
Lovel of Tichmersh ..	1299	1487	Yes.
Lumley	1384	1609	Yes.
Martin	1295	1326	No.
Mauley	1295	1415	No.
Montagu	1357	1541	Yes.
Monteagle	1514	1686	No.
Monthermer	1309	1541	Yes.
Morley	1299	1686	No.
Nevill of Raby	1295	1584	Yes.
Ogle	1461	1691	No.
Ormond of Rochford ...	1495	1515	No.
Pole of Montagu	1529	1541	Yes.
Ryther	1299	?	No.
St. Amand	1313	1508	
Sandys of the Vine	1529	1700	No.
Scales	1299	1473	No.
Scrope of Masham	1350	1517	No.
Stafford	1371	? 1450	No.
Strange of Blackmere ...	1308	1777	No.
Sudeley	1299	1473	No.
Talbot	1331	1777	No.
Tiptoft	1426	1485	No.
Umfreville	1295	1421	No.
Verdon	1295	1316	No.
Verdon	1332	? 1436	No.
Wake	1295	1407	No.
Welles	1299	1505	Yes.
William of Thame	1554	1559	No.
Woodstock	1320	1407	No.

DOCUMENT NO. 8A.

APPENDIX B.

LIST OF CLAIMS TO BARONIES IN ABEYANCE NOW BEFORE EITHER THE ATTORNEY-GENERAL, OR THE HOUSE OF LORDS.

Name of Barony.	Date of Creation.	Date of Abeyance.	If under Attainder.
Beauchamp of Bletsho ...	1363	1836	No.
Bourchier	1342	1646	No.
Compton	1572	1855	No.
Ferrers of Chartley ...	1299	1855	No.
Montagu	1470	1471	Yes.
Mordaunt	1529	1836	No.
Percy	1299	1572	Yes.
Pole of Montagu	1529	1541	Yes.
Poynings	1337	1572	Yes.
St. Maur	1314	1625	No.

Document No. 9.

Return showing the Proportion of Heirs of Barons by Writ Summoned to Parliament from 1295 to 1500.

—	Summoned.	No surviving heir male.	Heirs male.	Heirs male not summoned.	Proportion of heirs male not summoned.	Net total.
1295 ...	53	12	41	8	$\frac{1}{5}$th	33
1299 ...	72	21	51	19		32
1300–1400	143	45	98	46	$\frac{3}{8}$th	52
1400–1500	27	7	20	1	nearly $\frac{1}{2}$	19
					—	Of these 19 the 8 who were summoned on 26th July, 1461, may have acquired no more by their writs than did one of them, Humphrey Stafford, who was created Baron Stafford *in tail male* in 1464*

* The 8 were Hastings, Devereux, Herbert, Bourchier, Wenlok, Ogle, Lumley and Stafford.

From 1295 to 1363 there were 17 double summonses, no less than eight being in 1295. As late as 1482 three members of the Hastings family were summoned together on 15th November, William, his son Edward, and William's brother Richard. Details of double summonses are given on another return.

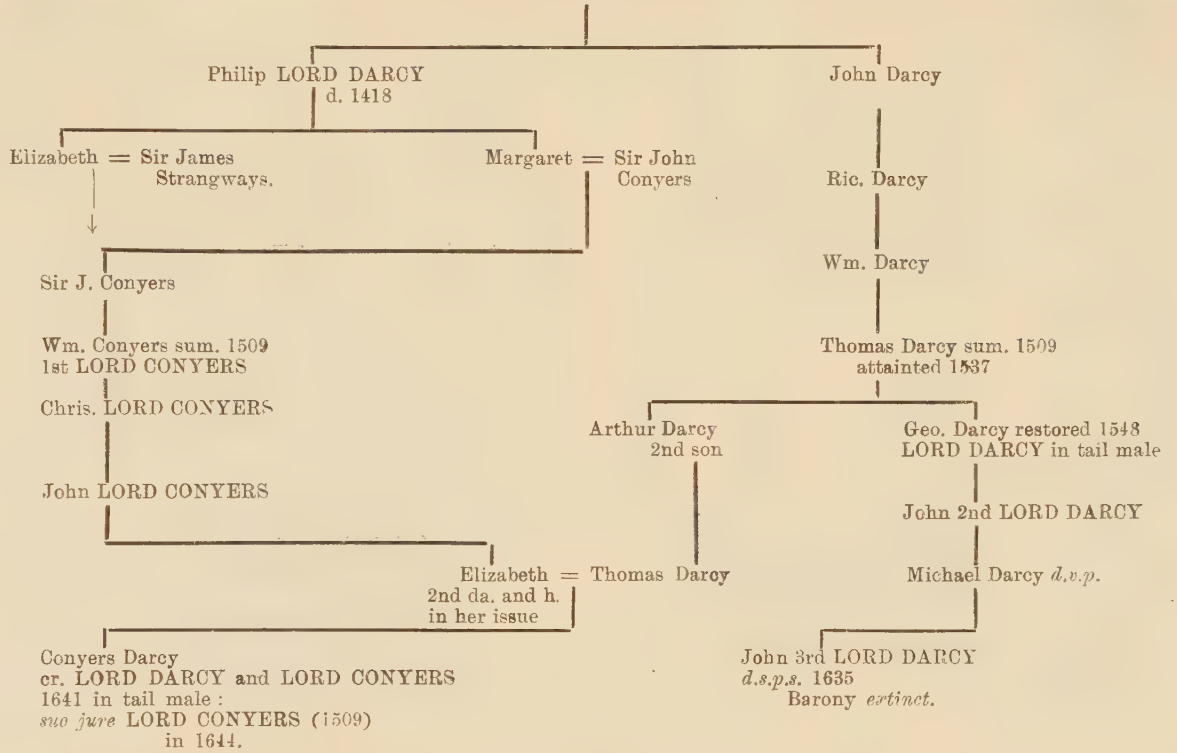
Document No. 10.

A List of Cases in which Two or More Summonses to the same Parliament have been issued to Members of the same Family—*e.g.*, Father, Son, Brothers, etc., presumably in respect of the same Lands.

Berkeley, 1295, son, 1308.
Clavering, 1295, son, 1299.
Despenser, 1295, son, 1314.
Furnivall, 1295, son, 1318.
Hastings, 1295, brother, 1299.
Montalt, 1295, brother, 1299.
Segrave, 1295, younger son, elder brother, 1296.
Verdon, 1295, son, 1299.
Courtenay, 1299, son, 1337.
De la Warr, 1299, son, 1307.
Lancaster, 1299, brother, 1299.
Latymer, 1299 (February), before his father, 1299 (December).
Clinton, 1330, younger son before elder brother, 1332.
Tregoz, 1305, son, 1318.
Zouche, 1308, grandson.
Audley, 1317, son summoned before father, 1321.

Document No. 11.

Pedigree of the Darcy Barony showing the co-heirship of Conyers Darcy and his Male Descent from the Grantee.


John 5th. LORD DARCY d. 1411
Philip LORD DARCY d. 1418
John Darcy
Elizabeth = Sir James Strangways.
Margaret = Sir John Conyers
Ric. Darcy
Wm. Darcy
Sir J. Conyers
Wm. Conyers sum. 1509 1st LORD CONYERS
Thomas Darcy sum. 1509 attainted 1537
Chris. LORD CONYERS
Arthur Darcy 2nd son
Geo. Darcy restored 1548 LORD DARCY in tail male
John LORD CONYERS
John 2nd LORD DARCY
Elizabeth = Thomas Darcy
2nd da. and h. in her issue
Michael Darcy d.v.p.
Conyers Darcy cr. LORD DARCY and LORD CONYERS 1641 in tail male : suo jure LORD CONYERS (1509) in 1644.
John 3rd LORD DARCY d.s.p.s. 1635 Barony extinct.

Document No. 12.

List of Baronies by Writ Taking Precedence of Stourton (1448), The First Barony by Patent.

(*N.B.*—If the end of the Wars of the Roses be taken as the earliest date at which an hereditary barony by writ may be held to have been created, many of the baronies in the following list would not be in existence, and all would have precedence after instead of prior to Stourton.)

1265, Despenser, Ros.
1283, Mowbray, Segrave.
1290, Hastings.
1295, Fauconberg, Fitzwalter, Furnivall.
1299, Clifford, Clinton, Strange.
1305, Botetourt.
1308, Zouche.
1309, Beaumont.
1313, Cobham, Willoughby d'Eresby.
1318, Strabolgi.
1321, Dacre.
1325, Grey de Ruthin.
1330, Maltravers.
1332, Darcy.
1368, Botreaux.
1375, Cromwell.
1383, Camoys.
1421, Berkeley.
1426, Hungerford.
1432, Latymer.
1440, Dudley.
1445, Molcyns.
1447, Saye and Sele.

There are five more created before 1500.

Document No. 13.

Instances of Fractional Representation.

1st Zouche, 1816 after 191 years, 4 coh. and 1 untraced.
1st Berners, 1832 after 89 years, 4 coh.
Vaux, 1838 after 175 years, 3 coh.
Camoys, 1839 after 413 years, 7 coh.
Braye, 1839 after 282 years, 4 coh. and 1 untraced.
Latymer, 1913 after 336 years, 14 coh.
Strabolgi, 1916 after 547 years, 5 coh, and 2 untraced.
Dudley, 1916 after 159 years, 2 coh. and 4 untraced.
Wharton, 1916 after 185 years, 7 coh.
Cobham, 1916 after 273 years, 4 coh.
Strange, 1921 after 327 years, 9 coh. and 2 untraced.

Document No. 14.

List of Authorities on the Subject of Peerages in Abeyance.

1. *Legal.*

Cruise on Dignities (passim).
Palmer: Peerage Law in England, 1907, pp. 38-46.
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